

District of Columbia Code

1981 Edition



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DISTRICT OF COLUMBIA CODE

ANNOTATED

1981 EDITION

With Provision for Subsequent Pocket Parts

CONTAINING THE LAWS, GENERAL AND PERMANENT IN THEIR NATURE,
RELATING TO OR IN FORCE IN THE DISTRICT OF COLUMBIA
(EXCEPT SUCH LAWS AS ARE OF APPLICATION IN THE
DISTRICT OF COLUMBIA BY REASON OF BEING
GENERAL AND PERMANENT LAWS OF THE
UNITED STATES), AS OF FEBRUARY 9, 1996,
AND NOTES TO DECISIONS
THROUGH MARCH 1, 1996

VOLUME 6

1996 REPLACEMENT

TITLE 24—PRISONERS AND THEIR TREATMENT

TITLE 25—ALCOHOLIC BEVERAGES

TITLE 26—BANKS AND OTHER FINANCIAL INSTITUTIONS

TITLE 27—CEMETERIES AND CREMATORIES

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MICHIE

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1996

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USER'S GUIDE

In order to assist both the legal profession and the layman in obtaining the maximum benefit from the District of Columbia Code, a User's Guide has been included in Volume 1 of the Code. This guide contains comments and information on the many features found within the District of Columbia Code intended to increase the usefulness of the Code to the user.

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6. Health and Safety.
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*Title has been enacted as law.

Title

26. Banks and Other Financial Institutions.
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**TITLE 24. PRISONERS AND THEIR
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Cross references. — As to Criminal Justice
Supervisory Board, see Chapter 11 of Title 2.

CHAPTER 1. PROBATION.

Sec.	Sec.
24-101. [Omitted].	24-105. Office and supplies for probation officers; expenses.
24-102. [Repealed].	24-106. Psychiatric services.
24-103. Investigations and reports.	
24-104. Discharge from or continuance of probation; modification or revocation of order.	

§ 24-101. Probation system; probation officers; appointment.

Omitted.

§ 24-102. When probation may be granted; statement to probationers; rules and regulations.

Repealed. Dec. 23, 1963, 77 Stat. 626, Pub. L. 88-241, § 21.

§ 24-103. Investigations and reports.

The probation officers shall carefully investigate all cases referred to them by the court, and make recommendations to the court to enable it to decide whether the defendant ought to be placed under probation, and shall report to the court, from time to time as may be required by it, touching all cases in their care, to the end that the court may be at all times fully informed of the circumstances and conduct of probationers. (June 25, 1910, 36 Stat. 864, ch. 433, § 3; 1973 Ed., § 24-103.)

Cross references. — As to split sentencing, see § 16-710.

As to restitution or reparation as sentencing options, see § 16-711.

As to community service as sentencing option, see § 16-712.

As to availability of psychiatric services to probation officers, see § 24-106.

Presentence investigation intended to aid judge's choice of rehabilitation program. — In sentencing, the judge must consider a program of rehabilitation designed to preclude, so far as current learning can furnish a guide, a repetition of the crime, and to such end Congress has placed several aids at disposal of judge, including provisions for presentence investigation, for commitment prior to sentence to a hospital for examination to determine mental competence of the offender, and for appointment of psychiatrist and psychologist. *Leach v. United States*, 320 F.2d 670 (D.C. Cir. 1963).

Probation officer has no right to recom-

mend sentence. — A recommendation by a probation officer to trial judge as to sentence to be imposed is not merely unauthorized by this chapter but is an infringement upon court's judicial function, which officer has no right to exercise and judge no right to permit. *Ishkanian v. United States*, App. D.C., 35 A.2d 176 (1944).

Sentence near that recommended by probation officer not set aside. — Where a probation officer had recommended a maximum sentence and, on objection to consideration of that recommendation, the trial judge, without express ruling thereon, sentenced the defendant to near the maximum penalty, the sentence was not set aside. *Ishkanian v. United States*, App. D.C., 35 A.2d 176 (1944).

Cited in *Stevens v. District of Columbia*, App. D.C., 127 A.2d 147 (1956); *People's Counsel v. Public Serv. Comm'n*, App. D.C., 399 A.2d 43 (1979); *White v. United States*, App. D.C., 564 A.2d 379 (1989).

§ 24-104. Discharge from or continuance of probation; modification or revocation of order.

Upon the expiration of the term fixed for such probation, the probation officer shall report that fact to the court, with a statement of the conduct of the probationer while on probation, and the court may thereupon discharge the probationer from further supervision, or may extend the probation, as shall seem advisable. At any time during the probationary term the court may modify the terms and conditions of the order of probation, or may terminate such probation, when in the opinion of the court the ends of justice shall require, and when the probation is so terminated the court shall enter an order discharging the probationer from serving the imposed penalty; or the court may revoke the order of probation and cause the rearrest of the probationer and impose a sentence and require him to serve the sentence or pay the fine originally imposed, or both, as the case may be, or any lesser sentence. If imposition of sentence was suspended, the court may impose any sentence which might have been imposed. If probation is revoked, the time of probation shall not be taken into account to diminish the time for which he was originally sentenced. (June 25, 1910, 36 Stat. 865, ch. 433, § 4; 1973 Ed., § 24-104; Mar. 10, 1983, D.C. Law 4-202, § 4, 30 DCR 173.)

Section references. — This section is referred to in § 24-461.

Legislative history of Law 4-202. — Law 4-202, the "District of Columbia Sentencing Improvement Act of 1982," was introduced in Council and assigned Bill No. 4-120, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on November 16, 1982, and December 14, 1982, respectively. Signed by the Mayor on December 28, 1982, it was assigned Act No. 4-286 and

transmitted to both Houses of Congress for its review.

This section and S.C.R. Criminal 35 are in harmony: This section establishes the scope of a court's discretion to modify a sentence within the context of probation revocation; Rule 35 controls such discretion in specified situations outside the probation revocation context. *Moore v. United States*, App. D.C., 468 A.2d 1331 (1983).

A trial court is vested with broad discre-

tion to determine whether to revoke probation, and its decision either way may be reversed only if that discretion has been abused. *Applewhite v. United States*, App. D.C., 614 A.2d 888 (1992).

S.C.R. Criminal 35 sets limits on a trial court's discretion to correct or reduce a sentence where the only basis for such an action is the illegality of the sentence or the method by which it was imposed, this section confers upon the court authority to change a sentence upon the revocation of probation without regard to any time limit and irrespective of whether the original sentence was legal, illegal, or imposed in an illegal manner. *Moore v. United States*, App. D.C., 468 A.2d 1331 (1983).

Unlike Super. Ct. Crim. Rule 35(a), this section has no applicability to the issue of how long a court retains jurisdiction to vacate a particular probationary sentence imposed improperly under the controlling sentencing statute. For the determination of that jurisdictional issue, the court must look to Super. Ct. Crim. Rule 35(a). *United States v. A.B.*, 117 WLR 785 (Super. Ct. 1989).

Probation statutes are broadly drawn and necessarily must lend themselves to flexibility. *Wright v. United States*, App. D.C., 315 A.2d 839 (1974).

This section is drawn broadly to give the court great leeway and flexibility to tailor the decision on probation to each probationer's needs. *Jacobs v. United States*, App. D.C., 399 A.2d 38 (1979).

But such statute should not be construed to result in absurdity where it fairly leaves room for construction to avoid such result. *Wright v. United States*, App. D.C., 315 A.2d 839 (1974).

"Probationary term" includes term beginning when probation granted. — Under this section, "probationary term" should be construed for revocation purposes as including term beginning at time probation is granted. *Wright v. United States*, App. D.C., 315 A.2d 839 (1974).

This section does not limit the number or length of extensions of probation. *Cooper v. United States*, App. D.C., 48 A.2d 771 (1946).

Once granted, probation does not become vested right; it is granted in sound exercise of discretion and so may be revoked. *Wright v. United States*, App. D.C., 315 A.2d 839 (1974).

Grant or revocation of probation within discretion of sentencing court. — The decision to grant or revoke probation is a matter committed to the sound discretion of the sentencing court. *Thompson v. United States*, App. D.C., 444 A.2d 972 (1982).

Court has jurisdiction to reconsider defendant's probation and revoke it if the

public interest seems to justify such action. *Cooper v. United States*, App. D.C., 48 A.2d 771 (1946).

Formal order not required to extend probation. — Although preferable, the trial court need not issue a formal order to extend probation; the initiation of revocation proceedings within the probationary term automatically extends the term until the time the proceedings take place. *Belcher v. United States*, App. D.C., 572 A.2d 453 (1990).

Notice to the probationer that there is probable cause for revocation satisfies due process. — A trial court need not notify a probationer or hold a hearing prior to issuing a show cause order, even if the order has the effect of extending his probationary term. A trial court satisfies the requirements of due process where, after it issues the order, it promptly notifies the probationer that there is probable cause for revocation of probation, and provides him with an opportunity to be heard before ruling on the matter. *Belcher v. United States*, App. D.C., 572 A.2d 453 (1990).

Limits of jurisdiction. — Actions by governmental agencies, such as the filing of a report by the probation department, do not extend the reach of the court's jurisdiction beyond the expiration of the probationary term. *Neal v. United States*, App. D.C., 571 A.2d 222 (1990).

A trial court cannot revoke probation after the expiration of the probationary term originally imposed unless the court extends the period of probation, or otherwise acts to preserve its jurisdiction, during the probationary term. *Sumpter v. United States*, App. D.C., 564 A.2d 21 (1989).

A trial court must initiate revocation proceedings, or formally extend the length of probation, during the term originally set for probation; where the trial court fails to take such action, it loses its jurisdiction to revoke probation upon expiration of the probationary term. *White v. United States*, App. D.C., 564 A.2d 379 (1989).

Probation is not tolled upon the probationer's incarceration, and trial court lost jurisdiction to revoke probation after expiration of probationary term, even though probationer was incarcerated on different crime prior to that expiration. *White v. United States*, App. D.C., 564 A.2d 379 (1989).

Where formal revocation proceeding is initiated within probation term, trial court retains jurisdiction to revoke probation even though the proceedings incident thereto are not completed until after the original term of probation has expired. *Dent v. District of Columbia*, App. D.C., 465 A.2d 841 (1983).

But probation may not be revoked without determination of violation. — Proba-

tion may not be revoked in the absence of a threshold determination that there has been a "violation" of the express conditions of probation, or of a condition so clearly implied that a probationer, in fairness, can be said to have notice of it. *Carradine v. United States*, App. D.C., 420 A.2d 1385 (1980).

Revocation of probation is a matter of judicial discretion. *Jones v. United States*, App. D.C., 401 A.2d 473 (1979).

Revocation of probation is within the court's discretion when the probationer commits offenses of such nature as to demonstrate to the court that he is unworthy of probation and that the granting of same would not be in subservience of the ends of justice and the best interests of the public, or the probationer. *Jacobs v. United States*, App. D.C., 399 A.2d 38 (1979).

Balancing competing interests. — In making a revocation decision, the court must balance the competing interests of the community in safety with the rehabilitative goals of probation. *Applewhite v. United States*, App. D.C., 614 A.2d 888 (1992).

Order to show cause why probationer should not have his probation revoked was sufficient to toll the expiration date of the probation and, although issued ex parte, was adequate to protect probationer's rights as the order gave notice to him of the grounds on which a violation of probation would be predicated and afforded him an opportunity to present his objections. *Dent v. District of Columbia*, App. D.C., 465 A.2d 841 (1983).

Order to show cause regarding probation revocation. — A show cause order issued within the original probationary term "extends the term," thereby extending the trial court's jurisdiction to revoke probation at least on the basis of a violation that occurred within the original probationary term; by issuance of the order, defendant is apprised that his status is in jeopardy. *Brown v. United States*, App. D.C., 666 A.2d 493 (1995).

Probation revocation hearing must accord due process. — Probation must not be revoked except after exercise of informed discretion based upon hearing in accordance with due process requirements. *Wright v. United States*, App. D.C., 315 A.2d 839 (1974).

The power to revoke probation given by this section must be exercised by informed discretion based upon a hearing in accordance with due process requirements. *Jacobs v. United States*, App. D.C., 399 A.2d 38 (1979).

Probationer must be given advance notice of probation revocation hearing, must be informed of charges against him, and must be given an opportunity to meet and answer the charges. *United States v. Joyner*, 486 F.2d 1261 (D.C. Cir. 1973).

Probation revocation proceeding is not a criminal prosecution; instead, it is more in

nature of an administrative hearing intimately concerned with probationer's rehabilitation; thus, grant of immunity from prosecution in exchange for testimony in criminal case cannot prevent use of defendant's testimony against defendant in a probation revocation hearing. *Short v. United States*, App. D.C., 366 A.2d 781 (1976).

Exclusionary rule is inapplicable to probation revocation proceedings in the absence of egregious circumstances which warrant exclusion of illegally seized evidence from such proceedings. *Thompson v. United States*, App. D.C., 444 A.2d 972 (1982).

Trial court is not required to reimpose original sentence upon revocation of probation, but has discretion to impose a new sentence within the statutory limits governing the offense for which the defendant was convicted, subject to constitutional limitations. *Mulky v. United States*, App. D.C., 451 A.2d 855 (1982).

Court's action held no abuse of discretion. — Trial court did not abuse its discretion in revoking defendant's probation for conviction of further criminal violation and imposing original sentence of six years for three separate offenses. *Nelson v. United States*, App. D.C., 479 A.2d 340 (1984).

Facts rendered probation revocation hearing unnecessary. — While a probationer has a right to a preliminary and a final revocation hearing, the purpose of the preliminary hearing is to determine if there is probable cause to believe that the probationer has violated a condition of his probation so that where the probationer has been convicted of and incarcerated on a subsequent offense, there is probable cause to believe that conditions of probation or parole have been violated, and a preliminary hearing is therefore unnecessary and he is entitled only to a final hearing. *Nelson v. United States*, App. D.C., 479 A.2d 340 (1984).

Revocation hearing required by facts. — A revocation hearing was to be held if defendant violated his conditions of probation by possessing illegal drugs; the community could not risk the possible reoccurrence of circumstances that led to murder by defendant, who was intoxicated at the time he murdered. *United States v. Johnson*, 123 WLR 2373 (Super. Ct. 1995).

Ex parte extension of probation. — Where this section did not require a hearing at the time of extension of probation, and procedure in the statute was complied with, probationer was not entitled to order setting aside revocation of extended probation on ground that extension of probation was entered ex parte. *United States v. Freeman*, 160 F. Supp. 532 (D.D.C. 1957), *aff'd*, 254 F.2d 352 (D.C. Cir. 1958).

Revocation by judge other than one who originally sentenced defendant. — That the judge who had originally sentenced defendant was no longer in office did not prevent another judge of the same court from revoking the defendant's probation. *Cooper v. United States*, App. D.C., 48 A.2d 771 (1946).

While a sentencing judge has the power under this section to modify or extend the terms of probation during the probationary term, there is nothing in this section that allows this power to be exercised by another judge in another case. *Hardy v. United States*, App. D.C., 578 A.2d 178 (1990).

Credit for time served. — Where federal prison released appellant on probation in accordance with this section, rather than on parole in appellant was not entitled to credit for his time on release. *Franklin v. Ridley*, App. D.C., 635 A.2d 356 (1993).

Extensions following return unexecuted of attachment for probation violation. — The extension of probation every 6 months after the return unexecuted of an attachment for violation of terms of probation kept the probation alive and did not violate this section. *Cooper v. United States*, App. D.C., 48 A.2d 771 (1946).

Probationer arrested on another charge was properly arrested by probation officer for violation of terms of probation when she appeared in another court to answer the new charge, since only the execution of the sentence had been suspended and the requirement as to probable cause for the commission of an offense did not apply to her. *Cooper v. United States*, App. D.C., 48 A.2d 771 (1946).

A defendant need not be given an opportunity to allocute again when a sentencing court revokes probation and orders that a previously imposed sentence take effect. *Applewhite v. United States*, App. D.C., 614 A.2d 888 (1992).

Due process denied by revocation based on mental problems. — Where maintenance or achievement of a particular level of mental stability was not an implied condition of defendant's probation, the trial court deprived defendant of due process by revoking his probation (absent any violation) solely on the basis of his mental problems and his request for additional psychiatric assistance. *Carradine v. United States*, App. D.C., 420 A.2d 1385 (1980).

Fifth Amendment violation claim based on admission of transcript. — Defendant's claim that his 5th Amendment privilege against self-incrimination was violated when transcript of his testimony in a kidnapping case, containing incriminating admissions, was received in evidence in probation revocation proceedings is without basis, since defendant had appeared as prosecution witness in kidnapping case in obedience to subpoena, and not as

a defendant, and thus trial judge owed defendant no duty to warn him of his right to remain silent and, when defendant testified voluntarily, he waived his 5th Amendment privilege so that admissions were properly received at probation revocation hearings. *Short v. United States*, App. D.C., 366 A.2d 781 (1976).

Oral pronouncement prevailed over conflicting written order as to term of original sentence. — Where on 1 count of uttering an instrument with intent to defraud the trial judge pronounced a suspended sentence of 1 to 3 years with 2 years of probation and restitution as a condition of probation, but on the same day he signed a judgment and probation order stating the suspended term of imprisonment to be from 1 to 2 years, the oral pronouncement prevailed over the written order because the former was clear and unambiguous, and therefore the judge who imposed a 1 to 3 year sentence upon revocation of probation did not place defendant in double jeopardy. *Valentine v. United States*, App. D.C., 394 A.2d 1374 (1978).

Revocation of probation where sentence included work release. — Where defendant was sentenced to imprisonment for 365 days, of which 180 days was to be served under work release program and the remainder suspended, and work release was to be followed by 1 year's probation, and defendant arrived at halfway house but that same evening left and did not return, sentencing court had power, after adequate hearing at which defendant was represented by counsel, to vacate prior order suspending sentence, and to revoke probation, though statute provided for modification of terms and conditions of order of probation at any time "during the probationary term." *Wright v. United States*, App. D.C., 315 A.2d 839 (1974).

Reduced sentence following probation revocation. — It was not error for a judge to deny a writ of habeas corpus, sought on the ground that the defendant was entitled to credit for time served on his original sentence after probation was revoked, where it was presumed that the reduced sentence that followed the probation revocation took into account the time the defendant had already served. *Brame v. Palmer*, App. D.C., 510 A.2d 229 (1986).

Court's action held no abuse of discretion. — Where probationer, against whom judgment of paternity had been entered, was committed once for being in arrears in weekly payments for support of child, but was released and was warned of action which the court would take for defaults in the future, and the court waited some 8 months, during which period probationer fell at least 12 payments in arrears, before acting on its warning and committing probationer for 30 days, there was no arbitrary, capricious, or wilful treatment of

probationer at hands of court, and court did not abuse its discretion. *Stevens v. District of Columbia*, App. D.C., 127 A.2d 147 (1956).

The court did not abuse its discretion in revoking defendant's probation based on defendant's admissions that he had unlawfully carried a 9-mm. pistol, engaged in gambling activities during his probationary period and made a false statement to police during an investigation. *Short v. United States*, App. D.C., 366 A.2d 781 (1976).

Facts rendered probation revocation hearing defective. — The facts that an "Important Notice From Your Bondsman," advising probationer to appear in court on certain date, did not explain purpose of hearing, that probationer did not personally receive any notification, that until day of hearing probationer's attorney had not seen him for several months, and that revocation was based on a simple statement of all charges made without explanation of circumstances out of which they arose, without presentation of evidence, and without specification by court of which of the charges, if less than all, the court's determination to revoke probation was based upon combined facts to render probation revocation hearing defective. *United States v. Joyner*, 486 F.2d 1261 (D.C. Cir. 1973).

Confinement under Youth Act. — Upon revocation of probation, a sentence of confinement imposed under § 24-801 et seq. may exceed in length an adult sentence of incarceration originally imposed and suspended. *United States v. Wheeler*, 115 WLR 2025 (Super. Ct. 1987).

Sanctions for violation of probation. — When a probationer violates a condition of his probation, the only appropriate sanction is a withdrawal of the previously afforded favorable treatment rather than the imposition of an additional penalty. Punishment for contempt is an additional and separate penalty. *Jones v. United States*, App. D.C., 560 A.2d 513 (1989).

The decision whether to revoke probation involves a two-step inquiry: (1) determining whether a violation has occurred and, if so, (2) determining what action, if any, should be taken as a result. *Harris v. United States*, App. D.C., 612 A.2d 198 (1992), cert. denied, — U.S. —, 113 S. Ct. 1826, 123 L. Ed. 2d 455 (1993).

Revocation of probation and imposition of adult sentence. — This section does not preclude the trial court from revoking Youth Rehabilitation Act probation (ordered in lieu of imposition of sentence) and then imposing an adult sentence. *Smith v. United States*, App. D.C., 597 A.2d 377 (1991).

If the trial court wishes to incarcerate a youth offender as an adult after revocation of Youth Rehabilitation Act probation, § 24-803(d) requires the trial court to make an

explicit finding on the record that the youth offender no longer will "derive benefit" from Youth Rehabilitation Act supervision (although the court need not provide supporting reasons). *Smith v. United States*, App. D.C., 597 A.2d 377 (1991).

Court erred in linking probation in a second case to a condition imposed by a different judge in a first case against defendant, so that a violation of a single condition could subject defendant to double punishment. *Hardy v. United States*, App. D.C., 578 A.2d 178 (1990).

Burden of proof. — Preponderance of the evidence is the appropriate minimum standard of proof required for establishing substantive and technical violations of probation. *Harris v. United States*, App. D.C., 612 A.2d 198 (1992), cert. denied, — U.S. —, 113 S. Ct. 1826, 123 L. Ed. 2d 455 (1993).

In accord with bound volume. *United States v. Johnson*, 123 WLR 2373 (Super. Ct. 1995).

The formal rules of evidence governing a criminal prosecution do not apply to a probation revocation proceeding. *Harris v. United States*, App. D.C., 612 A.2d 198 (1992), cert. denied, — U.S. —, 113 S. Ct. 1826, 123 L. Ed. 2d 455 (1993).

Evidence only needs to be reliable. — All that is required before admitting evidence at a probation revocation hearing is a determination that the proffered evidence is reliable; thus, reliable hearsay is admissible in probation revocation hearings, and its admission does not violate the confrontation clause. *Harris v. United States*, App. D.C., 612 A.2d 198 (1992), cert. denied, — U.S. —, 113 S. Ct. 1826, 123 L. Ed. 2d 455 (1993).

Probation violation reports bear recognized indicia of reliability. *Harris v. United States*, App. D.C., 612 A.2d 198 (1992), cert. denied, — U.S. —, 113 S. Ct. 1826, 123 L. Ed. 2d 455 (1993).

As do drug reports. — In the context of a probation revocation hearing, an Alcohol and Drug Abuse Services Administration report qualified as sufficiently reliable prima facie evidence that defendant had tested positive for illegal drug use. *Harris v. United States*, App. D.C., 612 A.2d 198 (1992), cert. denied, — U.S. —, 113 S. Ct. 1826, 123 L. Ed. 2d 455 (1993).

Prisoner must serve minimum sentence. — Where federal prison authorities incorrectly released defendant before his mandatory minimum prison term had been served, he by definition could not have been on "parole" following his release because the Board of Parole may authorize release on parole only after the prisoner has served the minimum sentence imposed. *Franklin v. Ridley*, App. D.C., 635 A.2d 356 (1993).

Termination of parole. — Unlike the terms and conditions of probation, which are commit-

ted to the trial court's discretion, the decision to terminate parole and to issue warrants for violation of the conditions of parole is within the sole authority of the Board of Parole. *Poteat v. United States*, App. D.C., 559 A.2d 334 (1989).

Cited in *Valentine v. United States*, App. D.C., 394 A.2d 1374 (1978); *Moore v. United States*, App. D.C., 428 A.2d 364 (1981); *Byrd v. United States*, App. D.C., 447 A.2d 454 (1982); *Smith v. United States*, App. D.C., 474 A.2d 1271 (1983).

§ 24-105. Office and supplies for probation officers; expenses.

The Chief Probation Officer of each court shall be entitled, for himself and his assistants, to a room in the building occupied by that court, and all necessary stationery and supplies for the transaction of the business of his office, and all the probation officers, except volunteer officers, shall be entitled to their necessary expenses in performing the duties of their office, under the direction of the court, the amount of the expense for such stationery, supplies, and expenses to be fixed and allowed by the court upon proper vouchers submitted to it by the probation officers, and accounts duly verified by their oath. (June 25, 1910, 36 Stat. 865, ch. 433, § 5; Mar. 4, 1919, 40 Stat. 1325, ch. 122; 1973 Ed., § 24-105.)

§ 24-106. Psychiatric services.

The Mayor shall appoint a qualified psychiatrist and a qualified psychologist whose services shall be available to the following officers to assist them in carrying out their duties:

(1) In criminal cases, the judges and probation officers of the United States District Court for the District of Columbia and the judges and Director of Social Services of the Superior Court of the District of Columbia;

(2) The judges and such personnel assigned to the Family Division of the Superior Court as the Chief Judge may designate;

(3) Such officers of the Department of Corrections as the Director thereof shall designate; and

(4) The Board of Parole of the District. (June 29, 1953, 67 Stat. 105, ch. 159, § 405; Aug. 16, 1954, 68 Stat. 730, ch. 737, § 1; July 8, 1963, 77 Stat. 77, Pub. L. 88-60, § 1; July 29, 1970, 84 Stat. 577, Pub. L. 91-358, title I, § 159(d); 1973 Ed., § 24-106.)

Cross references. — As to physical and mental examinations and treatment of child, see § 16-2315.

As to investigations and reports by probation officers, see § 24-103.

As to creation, powers and duties of Board of Parole, see §§ 24-201.1 to 24-201.3.

As to Department of Corrections, see §§ 24-441 to 24-446.

Section references. — This section is referred to in § 24-302.

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts

Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia,

respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

Prisoner who requested mental examination before sentence could have been examined under this section. *Leach v. United States*, 334 F.2d 945 (D.C. Cir. 1964).

Remedies for refusal to conduct psychiatric examination. — Should the Forensic Psychiatric Service refuse to conduct a psychiatric examination for fear of retaliation, either a writ of mandamus may be issued or the Joint Committee on Judicial Administration may intervene to ensure compliance with this section. *Moore v. United States*, App. D.C., 428 A.2d 364 (1981).

Entitlement to Parole Board's judicial immunity. — Doctor in the employ of the District of Columbia, performing those functions for the Parole Board which he had a statutory duty to perform and acting within the scope of his official duties by assisting the Parole Board in deciding whether or not to revoke the parolee's parole, was entitled to the protection of the Parole Board's judicial immunity. *Cunningham v. District of Columbia*, App. D.C., 584 A.2d 573 (1990).

Cited in *Matthews v. Hardy*, 420 F.2d 607 (D.C. Cir. 1969), cert. denied, 397 U.S. 1010, 90 S. Ct. 1231, 25 L. Ed. 2d 423 (1970); *In re Hurt*, App. D.C., 437 A.2d 590 (1981).

CHAPTER 2. INDETERMINATE SENTENCES AND PAROLES.

Subchapter I. General Provisions.

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Subchapter I. General Provisions.

§ 24-201. Board of Indeterminate Sentence and Parole.

Repealed. July 17, 1947, 61 Stat. 379, ch. 263, § 7.

§§ 24-201a, 24-201b. Board of Parole — Created; members; procedural rules; transfer of powers, employees, supplies and appropriations of Board of Indeterminate Sentence and Parole; duties of Parole Executive; cooperation of Department of Corrections.

Repealed. Apr. 28, 1988, D.C. Law 7-103, § 5(a), 34 DCR 8279.

Legislative history of Law 7-103. — See note to § 24-201.1.

§ 24-201c. Application for reduction of sentence.

When by reason of his training and response to the rehabilitation program of the Department of Corrections it appears to the Board that there is a reasonable probability that a prisoner will live and remain at liberty without violating the law, and that his immediate release is not incompatible with the welfare of society, but he has not served his minimum sentence, the Board in its discretion may apply to the court imposing sentence for a reduction of his minimum sentence. The court shall have jurisdiction to act upon the application at any time prior to the expiration of the minimum sentence and no hearing shall be required. If a prisoner is serving a sentence for a crime for

which a minimum sentence is prescribed by § 24-203(b) his minimum sentence shall not be reduced under this section below the minimum sentence so prescribed. (July 17, 1947, 61 Stat. 379, ch. 263, § 4; June 29, 1953, 67 Stat. 92, ch. 159, § 201(b); 1973 Ed., § 24-201c.)

Board may apply to trial court for reduction of minimum sentence without regard to the 120-day time constraints of Rule 35 of the Superior Court Rules of Criminal Procedure; the trial court then may act on such an application at any time prior to the expiration of the minimum sentence. *United States v. Nunzio*, App. D.C., 430 A.2d 1372 (1981).

Standard for reduction of sentence. — The reduction in minimum sentence provided by this section requires a finding only that the prisoner has responded well to the rehabilitation program of the correctional facility such that his continued incarceration would serve no further useful purpose. *Williams v. United States*, App. D.C., 421 A.2d 19 (1980).

Standard for reduction of sentence to time served. — In weighing petition by the Board for a reduction of defendant's minimum sentence to time served, the District Court seeks to determine whether the time served by the defendant is adequate to deter others from committing crimes and to satisfy society's desire for a punishment that fits offense, and also seeks to determine whether defendant is likely, if let free, to commit other crimes. *United States v. McIlwain*, 427 F. Supp. 358 (D.D.C. 1977).

Factors considered regarding request for reduced sentence. — Society's interest in visiting appropriate punishment upon those convicted of criminal offenses, as well as in ensuring that the time served is adequate for purposes of deterrence, are appropriate factors for the court to weigh in considering a petition by the Board of Parole under this section. *Johnson v. United States*, App. D.C., 562 A.2d 603 (1989).

Trial court did not abuse its discretion in weighing substantially appellant's failure to admit his guilt and to demonstrate some re-

morse in denying request for reduction of his minimum sentence. *Johnson v. United States*, App. D.C., 562 A.2d 603 (1989).

Reduction of sentence not equivalent of certificate of rehabilitation. — The grant of a reduction of minimum sentence so as to render a prisoner eligible for parole is not the equivalent of a certificate of rehabilitation. *Williams v. United States*, App. D.C., 421 A.2d 19 (1980).

Nor does it bar impeachment use of conviction. — The grant by a trial court of a reduction of a minimum sentence pursuant to this section does not bar impeachment use of the conviction under § 14-305(b)(2)(A)(ii). *Williams v. United States*, App. D.C., 421 A.2d 19 (1980).

Finding of rehabilitation sufficient for parole. — A finding that the prisoner is sufficiently rehabilitated for parole is not equivalent to a finding that he has been so completely rehabilitated that the probative value of his conviction on the issue of his credibility has been diminished. *Williams v. United States*, App. D.C., 421 A.2d 19 (1980).

Evidence held sufficient to justify defendant's immediate release. — Remorse, both deep and genuine, shown by defendant for what he did, together with a clearer indication of defendant's stability and the passing of an additional year since the initial petition by the Board for a reduction in minimum sentence to time served, is sufficient to establish that the defendant's immediate release is in the interest of justice. *United States v. McIlwain*, 427 F. Supp. 358 (D.D.C. 1977).

Cited in *United States v. Forbes*, 113 WLR 305 (Super. Ct. 1985); *Mitchner v. United States*, App. D.C., 531 A.2d 666 (1987); *Cosgrove v. Thornburgh*, 703 F. Supp. 995 (D.D.C. 1988).

§ 24-201.1. Board of Parole — Creation; term of members.

(a) A Board of Parole ("Board") for the penal and correctional institutions of the District of Columbia ("District") is established to consist of 5 members appointed by the Mayor of the District of Columbia ("Mayor") with the advice and consent of the Council of the District of Columbia ("Council"). The nomination of a Board member shall be submitted to the Council for a 90-day period of review excluding days of Council recess. The Council may approve or disapprove the nomination by resolution within 90 days of the date the nomination is transmitted to the Council. If the Council does not act within the 90-day period, the nomination:

(1) Shall be deemed disapproved; or

(2) Shall be deemed approved if the Council has not acted on the 3 prior nominations for the same vacancy.

(b) One member of the Board shall be designated as Chairperson of the Board ("Chairperson") by the Mayor. Each member of the Board shall be a resident of the District selected on the basis of his or her broad experience in responsible positions in the fields of corrections, social services, rehabilitation, or law, or education in related fields of behavioral science. Members of the Board shall be compensated at a rate determined by the Mayor in accordance with applicable laws.

(c) Initial appointments to the Board shall be as follows: the Chairperson shall be appointed for 5 years; 2 members shall be appointed for 3 years; and 2 members shall be appointed for 2 years. Thereafter, all appointments shall be for 5 years. In the event of a vacancy on the Board, the Mayor shall appoint a successor to complete the unexpired term of that member.

(d) The Mayor shall submit to the Council a nomination for each position on the Board within 60 days of effective date of this act.

(e) The Board of Parole as established by Organization Order No. 6, effective December 26, 1967 (C.O. 67-95; 14 DCR 152), is abolished.

(f) Each member of the Board of Parole established pursuant to Organization Order No. 6, effective December 26, 1967 (C.O. 67-95; 14 DCR 152), serving as a member as of effective date of this act shall serve as an interim member of the Board established by this section, until a replacement member, appointed pursuant to this section, is sworn in. (Apr. 28, 1988, D.C. Law 7-103, § 2, 34 DCR 8279.)

Section references. — This section is referred to in § 24-201.3.

Legislative history of Law 7-103. — Law 7-103, the "District of Columbia Board of Parole Amendment Act of 1987," was introduced in Council and assigned Bill No. 7-133, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on Nov. 10, 1987 and Nov. 24, 1987, respectively. Deemed approved without the signature of the Mayor on December 14, 1987, it was assigned Act No. 7-122 and transmitted to both Houses of Congress for its review.

Delegation of Authority Pursuant to D.C. Law 7-103, the "District of Columbia Board of Parole Amendment Act of 1987." — See Mayor's Order 89-10, January 6, 1989.

Judicial immunity. — Parole boards are shielded by judicial immunity when they perform their official duties. *Cunningham v. District of Columbia*, App. D.C., 584 A.2d 573 (1990).

Cited in *Foster v. United States*, App. D.C., 615 A.2d 213 (1992).

§ 24-201.2. Powers and duties of Board; transfer of employees, official records, etc. from Board of Parole.

(a) The Board shall:

(1) Determine if and when it is in the best interest of society and the offender to release him or her on parole or on conditional release in the case of committed youth offenders;

(2) Determine the terms and conditions of parole or conditional release;

(3) Supervise parolees in the community; and

(4) Determine if and when to terminate parole or conditional release or to modify the terms or conditions of parole or conditional release.

(b) A quorum shall consist of 3 members of the Board. All decisions regarding approval, denial, or revocation of parole shall be by majority vote of the Board.

(c) The Chairperson shall preside at meetings of the Board and provide for and supervise the administrative and ministerial activities and personnel of the Board.

(d) The Chairperson shall insure that all Board policies, plans, rules, and standards are coordinated with the Department of Corrections in order to provide for an effective and integrated correctional system and for continuity in treatment and training of offenders that is geared to their readjustment as productive and useful members of society.

(e) The employees, official records, furniture, supplies, and any unexpended balance of any appropriation of the Board of Parole shall be transferred to the Board. (Apr. 28, 1988, D.C. Law 7-103, § 3, 34 DCR 8279.)

Section references. — This section is referred to in § 24-201.3.

Legislative history of Law 7-103. — See note to § 24-201.1.

Parole revocation votes. — This section provides only that a majority of the quorum of

three Board of Parole members must make the determination to revoke parole; it does not require that the vote take place at a meeting of the Parole Board. *Bennett v. Ridley*, App. D.C., 633 A.2d 824 (1993).

§ 24-201.3. Rulemaking.

The Mayor shall promulgate proposed rules to implement the provisions of §§ 24-201.1 to 24-201.3. The proposed rules shall be submitted to the Council for a 60-day period of review, excluding Saturdays, Sundays, legal holidays, and days of Council recess. If the Council does not approve or disapprove the proposed rules, in whole or in part, by resolution within this 60-day review period, the proposed rules shall be deemed approved. Nothing in this section shall affect any requirements imposed upon the Mayor by subchapter I of Chapter 15 of Title 1. (Apr. 28, 1988, D.C. Law 7-103, § 4, 34 DCR 8279.)

Legislative history of Law 7-103. — See note to § 24-201.1.

§ 24-202. Employees of Board of Indeterminate Sentence and Parole.

Repealed. July 17, 1947, 61 Stat. 379, ch. 263, § 7.

§ 24-203. Indeterminate sentences; life sentences; minimum sentences.

(a) Except as provided in subsections (b) and (c) of this section, in imposing sentence on a person convicted in the District of Columbia of a felony, the justice or judge of the court imposing such sentence shall sentence the person for a maximum period not exceeding the maximum fixed by law, and for a

minimum period not exceeding one-third of the maximum sentence imposed, and any person so convicted and sentenced may be released on parole as herein provided at any time after having served the minimum sentence. Where the maximum sentence imposed is life imprisonment, a minimum sentence shall be imposed which shall not exceed 15 years imprisonment.

(b) The minimum sentence imposed under this section on a person convicted of an assault with intent to commit rape in violation of § 22-501, or of armed robbery in violation of § 22-3202 shall be not less than 2 years if the violation occurs after the person has been convicted in the District of Columbia or elsewhere of a crime of violence as defined in § 22-3201, providing for the control of dangerous weapons in the District of Columbia. The minimum sentence imposed under this section on a person convicted of rape in violation of § 22-2801, shall not be less than 7 years if the violation occurs after the person has been convicted in the District of Columbia or elsewhere of a crime of violence, as so defined. The maximum sentence in each case to which this subsection applies shall not be less than 3 times the minimum sentence imposed, and shall not be more than the maximum fixed by law.

(c) For a person convicted of: (1) a violation of § 22-505 (relating to assault with a dangerous weapon on a police officer) occurring after the person has been convicted of a violation of that section or of a felony, either in the District of Columbia or in another jurisdiction; (2) a violation of § 22-3203, providing for the control of dangerous weapons in the District (relating to illegal possession of a pistol), occurring after the person has been convicted of violating that section; or (3) a violation of § 22-3601 (relating to possession of implements of crime) occurring after the person has been convicted in the District of Columbia of a violation of that section or of a felony, either in the District of Columbia or in another jurisdiction, the minimum sentence imposed under this section shall not be less than 1 year, and the maximum sentence shall not be less than 3 times the minimum sentence imposed nor more than the maximum fixed by law. (July 15, 1932, 47 Stat. 697, ch. 492, § 3; June 6, 1940, 54 Stat. 242, ch. 254, § 2; June 29, 1953, 67 Stat. 91, ch. 159, § 201(a); 1973 Ed., § 24-203; Feb. 26, 1981, D.C. Law 3-113, § 4, 27 DCR 5624.)

Cross references. — As to this section's inapplicability to federal sentences for continuing criminal enterprises, see 21 U.S.C. § 848(d).

As to assault with intent to kill, rob, rape, or poison, see § 22-501.

As to burglary, see § 22-1801.

As to sexual abuse generally, see Chapter 41 of Title 22.

As to robbery, see § 22-2901.

As to definition of "crime of violence," see § 22-3201.

As to added punishment for committing crime when armed, see § 22-3202.

Section references. — This section is referred to in §§ 24-201c and 24-207.

Legislative history of Law 3-113. — Law 3-113, the "District of Columbia Death Penalty Repeal Act of 1980," was introduced in Council

and assigned Bill No. 3-395, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on November 12, 1980 and December 9, 1980, respectively. Signed by the Mayor on December 17, 1980, it was assigned Act No 3-307 and transmitted to both Houses of Congress for its review.

References in text. — Subsection (b) of this section was added by the Act of June 29, 1953 and originally contained the phrase "armed robbery in violation of section 810 of such Act (D.C. Code 22-3202)." Section 810 of the Act of March 3, 1901 is found in the Code as § 22-2901 and concerns the crime of robbery. Section 22-3202 concerns the commission of a crime while armed.

Editor's note. — Section 22-2801 referred to in (b) has been repealed. For present provi-

sions regarding sexual abuse, see Chapter 41 of Title 22.

Meaning of indeterminate sentence. — An indeterminate sentence is one for the maximum period imposed by the court, subject to termination by the Board at any time after service of the minimum period. *Story v. Rives*, 97 F.2d 182 (D.C. Cir.), cert. denied, 305 U.S. 595, 59 S. Ct. 71, 83 L. Ed. 377 (1938).

Indeterminate sentence differs from determinate sentence only in that the former imposes a minimum term; the good time and industrial time off provisions, however, are geared to the maximum term and the minimum term does not affect the computation. *Johnson v. Ward*, 171 F. Supp. 26 (D.D.C. 1959), aff'd, 278 F.2d 245 (D.C. Cir. 1960).

Sentence is legal so far as it is within provisions of law and jurisdiction of court, and is void only as to excess when such excess is separable and may be dealt with without disturbing valid portion of sentence. *United States v. Neufield*, 62 F. Supp. 600 (D.D.C. 1945).

Prisoner may be released only in discretion of Board. — A prisoner may be released from imprisonment before he has served the maximum period of his sentence, less lawful good-time allowance, only in the discretion of the Board. *De Benque v. United States*, 85 F.2d 202 (D.C. Cir.), cert. denied, 298 U.S. 681, 56 S. Ct. 960, 80 L. Ed. 1402 (1936).

Indeterminate Sentence Act is not applicable where crime was committed before passage of that Act. *De Benque v. United States*, 85 F.2d 202 (D.C. Cir.), cert. denied, 298 U.S. 681, 56 S. Ct. 960, 80 L. Ed. 1402 (1936).

Indeterminate Sentence Act is inapplicable to second-degree murder and the existing statute providing a penalty of imprisonment for life or for not less than 20 years remains in effect. *Anderson v. Rives*, 85 F.2d 673 (D.C. Cir. 1936).

This section is inapplicable to a criminal contempt conviction not only because it ought not and is not intended to apply, but also because it cannot be made applicable in view of fact that trial judge has nonarbitrary discretion in matter of sentence. *Warring v. Huff*, 122 F.2d 641 (D.C. Cir.), cert. denied, 314 U.S. 678, 62 S. Ct. 183, 86 L. Ed. 543 (1941).

Incarceration in federal institution. — A defendant's sentence and parole are determined by the jurisdiction whose laws are violated even though the situs of incarceration determines which board of parole has supervisory jurisdiction and this arrangement, on its face, does not deny a prisoner convicted of District of Columbia Code offenses but incarcerated in a federal institution, equal protection and due process of law. *Mitchner v. United States*, App. D.C., 531 A.2d 666 (1987).

This section and § 22-2404 establish 15-year maximum minimum sentence for second-degree murder. — To avoid the "absurd result" of a higher minimum sentence for second-degree murder than first-degree, this section, in combination with § 22-2404, must be construed as establishing a 15-year maximum minimum sentence for second-degree murder. *Haney v. United States*, App. D.C., 473 A.2d 393 (1984).

Minimum sentence inapplicable to life imprisonment for first-degree murder. — The 15-year minimum for sentences of "life imprisonment" for other offenses does not apply to sentences of life imprisonment for first-degree murder, because of § 22-2404's status as a special statute applicable to every sentence to life imprisonment for first-degree murder. *Bryant v. Civiletti*, 663 F.2d 286 (D.C. Cir. 1981).

Sentence for criminal contempt may include minimum and maximum term. — Although the Indeterminate Sentence Act does not apply to a criminal contempt conviction, the judge, within his discretion, may structure the sentence for such a conviction to include a minimum and maximum term. *In re Neal*, App. D.C., 475 A.2d 390 (1984).

Effect of Federal Parole Act on 15-year minimum sentence. — Federal court suggested, though it was not required to decide, that the general eligibility section (18 U.S.C. § 4205 (a), repealed effective October 12, 1984, 98 Stat. 2027, Pub. L. 98-473) of the Federal Parole Act did not supersede the specific 15-year minimum sentence prescribed in subsection (a). *Fraday v. United States Bureau of Prisons*, 570 F.2d 1027 (D.C. Cir. 1978).

The full aggregation approach must be used in calculating the parole eligibility date of persons incarcerated in federal penitentiaries, whether under U.S. Code sentences or both U.S. Code and D.C. Code sentences, but persons sentenced for D.C. Code offenses must serve time at least equal to the minimum D.C. Code term or terms before they may be considered for parole. *Chatman-Bey v. Meese*, 797 F.2d 987 (D.C. Cir. 1986), vacated on other grounds, sub nom. *Chatman-Bey v. Smith*, 821 F.2d 789 (D.C. Cir. 1987).

The interaction of former 18 U.S.C. § 4205(a), and this section should give full effect to the sentence aggregation approach indicated by 18 U.S.C. § 4205(a), while at the same time obligating prisoners to serve at least the minimum term or terms imposed under the D.C. Code. Thus the FBP should follow a uniform, full aggregation approach in calculating parole eligibility for persons incarcerated in federal penitentiaries. Whether consecutive sentences are imposed solely under the U.S. Code, or under the federal code and the D.C. Code, all should be added together to arrive at

a single aggregate sentence. But because the D.C. Code “otherwise provides,” the 10-year cap indicated in 18 U.S.C. § 4205(a) would not be dispositive when a D.C. Code sentence is implicated. Rather, the prisoner would remain ineligible for parole until he completed service of time equivalent to the minimum D.C. Code sentence or sentences. *United States v. Johnson*, 114 WLR 2089 (Super. Ct. 1986).

Modification of sentence before minimum sentence set. — Where a notice of appeal was filed after the trial court sentenced defendant but before the trial court entered order setting minimum sentences, the trial court was without jurisdiction to modify the sentence so as to provide for the minimum sentencing required by this section. *Smith v. United States*, App. D.C., 357 A.2d 418 (1976).

Modification to correct error. — A trial judge may correct a sentencing error four days after it was made. Amendment of an original sentence of “seven to 12 years”, to “seven to 21 years,” as required by law, was proper. *Blakeney v. United States*, App. D.C., 653 A.2d 365 (1995).

Court’s power to resentence following void sentences. — Where the first sentences imposed under Indeterminate Sentence law were void, since the said statute was by its own terms inapplicable, the passing of the term did not deprive the court of power to resentence. *De Benque v. United States*, 85 F.2d 202 (D.C. Cir.), cert. denied, 298 U.S. 681, 56 S. Ct. 960, 80 L. Ed. 1402 (1936).

Effect of section on sentencing under Youth Corrections Act. — The prospect of having conviction automatically set aside under Youth Corrections Act was a difference so important as to outweigh possibility of longer confinement and to warrant conclusion that a second sentence, of 34 months to 102 months, under Indeterminate Sentence Law, was more

severe than a first sentence, of 3 to 9 years, under Youth Corrections Act, for robbery; and, accordingly, the second sentence, entered on motion to correct, was invalid where offender had already begun to serve first sentence. *Tatum v. United States*, 310 F.2d 854 (D.C. Cir. 1962).

Facts sufficient to admit felony-murder defendant to bail. — In view of the outstanding detention record of defendant, who had been convicted 4 times in an 8-year period for felony-murder in connection with an attempted robbery and whose first 3 convictions had been reversed, coupled with defendant’s strong area ties, his family’s help, assured employment, and his apparent determination to live a useful and productive life, the defendant would be admitted to bail pending appeal from 4th conviction. *United States v. Harrison*, 405 F.2d 355 (D.C. Cir. 1968).

Cited in *United States v. Wilkerson*, 598 F.2d 621 (D.C. Cir. 1978); *Oesby v. United States*, App. D.C., 398 A.2d 1 (1979); *United States v. Bryant*, 663 F.2d 293 (D.C. Cir. 1981); *United States v. Nunzio*, App. D.C., 430 A.2d 1372 (1981); *Dobson v. United States*, App. D.C., 449 A.2d 1082 (1982), cert. denied, 464 U.S. 831, 104 S. Ct. 109, 78 L. Ed. 2d 111 (1983); *United States v. Redwood*, 110 WLR 1485 (Super. Ct. 1982); *Cosgrove v. Smith*, 697 F.2d 1125 (D.C. Cir. 1983); *Shelvy v. Whitfield*, 718 F.2d 441 (D.C. Cir. 1983); *Fitzgerald v. United States*, App. D.C., 472 A.2d 52 (1984); *Brown v. United States*, App. D.C., 474 A.2d 161 (1984); *Jones v. District of Columbia Dep’t of Emp. Servs.*, App. D.C., 553 A.2d 645 (1989); *Legrant v. United States*, App. D.C., 570 A.2d 786 (1990); *David v. United States*, App. D.C., 579 A.2d 1172 (1990); *Joiner v. United States*, App. D.C., 585 A.2d 176 (1991); *Murray v. Stempson*, App. D.C., 633 A.2d 48 (1993).

§ 24-204. Authorization of parole; custody; discharge.

(a) Whenever it shall appear to the Board of Parole that there is a reasonable probability that a prisoner will live and remain at liberty without violating the law, that his release is not incompatible with the welfare of society, and that he has served the minimum sentence imposed or the prescribed portion of his sentence, as the case may be, the Board may authorize his release on parole upon such terms and conditions as the Board shall from time to time prescribe. While on parole, a prisoner shall remain in the legal custody and under the control of the Attorney General of the United States or his authorized representative until the expiration of the maximum of the term or terms specified in his sentence without regard to good time allowance.

(b) Notwithstanding the provisions of subsection (a) of this section, the Council of the District of Columbia may promulgate rules and regulations under which the Board of Parole, in its discretion, may discharge a parolee

from supervision prior to the expiration of the maximum term or terms for which he was sentenced. (July 15, 1932, 47 Stat. 697, ch. 492, § 4; June 6, 1940, 54 Stat. 242, ch. 254, § 3; July 17, 1947, 61 Stat. 378, ch. 263, § 3; May 22, 1965, 79 Stat. 113, Pub. L. 89-24, § 1; 1973 Ed., § 24-204.)

Cross references. — As to this section's inapplicability to federal sentences for continuing criminal enterprises, see 21 U.S.C. § 848(d).

Section references. — This section is referred to in §§ 4-134 and 24-207.

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 402(210) of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to the District of Columbia Council, subject to the right of the Commissioner as provided in § 406 of the Plan. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

Liberty interest in parole. — This section does not create a liberty interest in parole. *Brandon v. District of Columbia Bd. of Parole*, 631 F. Supp. 435 (D.D.C. 1986), *aff'd*, 823 F.2d 644 (D.C. Cir. 1987).

The District of Columbia Code does not create a liberty interest in parole that is protected by the Due Process Clause of the Fourteenth Amendment. *Price v. Barry*, 53 F.3d 369 (D.C. Cir. 1995).

The District's parole scheme confers discretion to grant or deny parole and the scoring systems used to grant or deny parole create no liberty interest overriding the exercise of that discretion. *McRae v. Hyman*, App. D.C., 667 A.2d 1356 (1995).

Because this section and regulations vest in the board substantial discretion in granting or denying parole, they lack the mandatory character which the Supreme Court has found essential to a claim that a regime of parole gives rise to a liberty interest. *McRae v. Hyman*, App. D.C., 667 A.2d 1356 (1995).

Congress intended to provide uniform administration of federal and District of

Columbia law with respect to control of released prisoners. *Johnson v. Ward*, 278 F.2d 245 (D.C. Cir. 1960).

Authority of Board. — The Board has authority to impose conditions or to exercise supervision over prisoners convicted in the District of Columbia and thereafter released because of good conduct allowance. In *re Reed*, 158 F.2d 323 (D.C. Cir. 1946).

Unlike the terms and conditions of probation, which are committed to the trial court's discretion, the decision to terminate parole and to issue warrants for violation of the conditions of parole is within the sole authority of the Board of Parole. *Poteat v. United States*, App. D.C., 559 A.2d 334 (1989).

Board has a wide choice of dispositional alternatives: (1) It may excuse the violation altogether and withdraw its warrant; (2) it may immediately revoke parole; and (3) it may withhold revocation until parolee has completed service of his intervening sentence and then revoke parole. *Shelton v. United States Bd. of Parole*, 388 F.2d 567 (D.C. Cir. 1967).

Board is vested with broad discretion in the dispositional process. *Shelton v. United States Bd. of Parole*, 388 F.2d 567 (D.C. Cir. 1967).

The statutory language of this section is phrased in discretionary terms, and leaves to the Board of Parole the determination of whether a prisoner is likely to be a responsible citizen if he is returned to the community and whether release on parole is consistent with public safety. *White v. Hyman*, App. D.C., 647 A.2d 1175 (1994).

Because the exercise of discretion to which defendant was entitled is available under the new guidelines, as it was previously, the change in the manner in which that discretion is exercised by the District of Columbia Parole Board does not run afoul of the *ex post facto* clause. *Davis v. Henderson*, App. D.C., 652 A.2d 634 (1995).

Numerical system adopted by Board is not rigid formula. — The numerical system adopted to aid in exercise of board's discretion is not a rigid formula because the board is not required to either grant or deny parole based upon the score attained; rather, in unusual cases, the board may ignore the results of the scoring system and either grant or deny parole in the individual case, conditioned upon the board's setting forth in writing those factors it relied on in departing from the result indicated by the scoring system. *McRae v. Hyman*, App. D.C., 667 A.2d 1356 (1995).

This section is not applicable to prisoner who is given conditional release. *Johnson v. Ward*, 171 F. Supp. 26 (D.D.C. 1959), *aff'd*, 278 F.2d 245 (D.C. Cir. 1960).

Rehabilitation equated with discharge from, not eligibility for parole. — The legislative history of subsection (b) of this section clearly indicates that Congress equated rehabilitation with discharge from parole supervision and not with eligibility for early parole. *Williams v. United States*, App. D.C., 421 A.2d 19 (1980).

Reduction of sentence rendering prisoner eligible for parole. — The grant of a reduction of minimum sentence so as to render a prisoner eligible for parole is not the equivalent of a certificate of rehabilitation. *Williams v. United States*, App. D.C., 421 A.2d 19 (1980).

Judicial review of Board's selection of a disposition. — The Board's selection of a particular disposition, after full and fair consideration of available facts, may be regarded as almost unreviewable, but failure to afford a procedure whereby violator may seek a favorable disposition, or an outright refusal to consider proffered evidence in mitigation, is not immune from judicial review. *Shelton v. United States Bd. of Parole*, 388 F.2d 567 (D.C. Cir. 1967).

Judicial review available only after administrative remedies exhausted. — Judicial reviews of dispositional phase of parole revocation proceedings is available, if at all, only after the violator has pursued his administrative remedies. *Shelton v. United States Bd. of Parole*, 388 F.2d 567 (D.C. Cir. 1967).

Prisoner must first bring his challenge via the Administrative Remedy Procedure, as outlined in Department Order 4030.1C, and then to the Institutional Appeals Board. After exhausting those administrative avenues, prisoner then retains the option of securing judicial review if he is dissatisfied with the decision of the Board. *Murray v. Stempson*, App. D.C., 633 A.2d 48 (1993).

Effect of new Board regulations on pending appeals. — Where the Board had issued new regulations concerning the processing and disposition of applications for withdrawal or execution of parole violator warrants prior to expiration of the intervening sentence, appeals not otherwise disposed of would be remanded so that petitioners might pursue the administrative remedies provided in those regulations. *Shelton v. United States Bd. of Parole*, 388 F.2d 567 (D.C. Cir. 1967).

Proof of racial discrimination as basis for denial of parole. — The material facts in a prisoner's suit against the Board claiming that racial discrimination was basis of denial of parole must legitimately tend to show that the Board acted under color of law, and thereby subjected prisoner to deprivation of his federal

rights. *Richardson v. Rivers*, 335 F.2d 996 (D.C. Cir. 1964).

Supervision following conditional release. — Where a defendant was given conditional release when his accumulated good time and industrial good time allowances and his time already served totaled the length of the term to which he had been sentenced, defendant was thereafter under the supervision of the United States Board of Parole until his maximum sentence expired, not counting his good time and industrial time allowances. *Johnson v. Ward*, 171 F. Supp. 26 (D.D.C. 1959), *aff'd*, 278 F.2d 245 (D.C. Cir. 1960).

Termination of supervision is not termination of parole. *Allen v. District of Columbia Hacker's License Appeal Bd.*, App. D.C., 471 A.2d 271 (1984).

Unsupervised parolee subject to same sanctions as supervised parolee. — While an unsupervised parolee is freed from the duty of reporting, that freedom is only conditional; he remains subject to the same sanctions as those who are still supervised. He is not a fully free man. *Allen v. District of Columbia Hacker's License Appeal Bd.*, App. D.C., 471 A.2d 271 (1984).

Supervision of released federal prisoner. — Where federal prisoner was released pursuant to 18 U.S.C. § 4164, he was under supervision of the Board until the maximum sentence, not counting time off for good behavior, expired. *Hicks v. Reid*, 194 F.2d 327 (D.C. Cir.), *cert. denied*, 344 U.S. 840, 73 S. Ct. 51, 97 L. Ed. 653 (1952).

Effect of Federal Parole Act. — The full aggregation approach must be used in calculating the parole eligibility date of persons incarcerated in federal penitentiaries, whether under U.S. Code sentences of both U.S. Code and D.C. Code sentences, but persons sentenced for D.C. Code offenses must serve time at least equal to the minimum D.C. Code term or terms before they may be considered for parole. *Chatman-Bey v. Meese*, 797 F.2d 987 (D.C. Cir. 1986), *vacated on other grounds*, *sub nom. Chatman-Bey v. Smith*, 821 F.2d 789 (D.C. Cir. 1987).

The interaction of former 18 U.S.C. § 4205(a), and this section should give full effect to the sentence aggregation approach indicated by 18 U.S.C. § 4205(a), while at the same time obligating prisoners to serve at least the minimum term or terms imposed under the D.C. Code. Thus the Federal Board of Parole should follow a uniform, full aggregation approach in calculating parole eligibility for persons incarcerated in federal penitentiaries. Whether consecutive sentences are imposed solely under the U.S. Code, or under the federal code and the D.C. Code, all should be added together to arrive at a single aggregate sentence. But because the D.C. Code "otherwise

provides,” the 10-year cap indicated in 18 U.S.C. § 4205(a) would not be dispositive when a D.C. Code sentence is implicated. Rather, the prisoner would remain ineligible for parole until he completed service of time equivalent to the minimum D.C. Code sentence or sentences. *United States v. Johnson*, 114 WLR 2089 (Super. Ct. 1986).

Disposition of consequences of parole violation. — Where the fact of a parole violation has been conclusively established by an adjudication, either state or federal, that a criminal offense was committed during release period, a parole violator may apply to the Board for immediate determination of disposition to be made concerning consequences of his parole violation and to seek what is in effect concurrent service on all, or a part of, the unexpired portion of his original sentence with the sentence imposed for criminal offense which constituted the parole violation. *Shelton v. United States Bd. of Parole*, 388 F.2d 567 (D.C. Cir. 1967).

Computation of sentence for parole eligibility. — The Department of Corrections improperly computed prisoner’s sentences where it failed to give prisoner credit toward parole eligibility for time served under sentence which was later vacated. *Cogdell v. Jackson*, 397 F. Supp. 362 (D.D.C. 1975).

Applicability of parole. — Where federal prison authorities incorrectly released defendant before his mandatory minimum prison term had been served, he by definition could not have been on “parole” following his release because the Board of Parole may authorize

release on parole only after the prisoner has served the minimum sentence imposed. *Franklin v. Ridley*, App. D.C., 635 A.2d 356 (1993).

Facts created no genuine issue as to alleged racial discrimination. — A prisoner’s conclusory assertions that racial discrimination was the basis of the Board’s denial of parole as against Board’s affidavits in denying discrimination did not create a genuine issue as to a material fact when viewed in light of the Board’s broad discretionary power. *Richardson v. Rivers*, 335 F.2d 996 (D.C. Cir. 1964).

Evidence sufficient to deny parole. — Where evidence suggested that defendant was unlikely to make a satisfactory independent adjustment in the community, since early adolescence had not been able to maintain a satisfactory adaption to society, and seemed to have functioned at his best level with the structure and controls that were placed on him while he was incarcerated, the board could readily determine that there was no reasonable probability that defendant would “live and remain at liberty without violating the law” or that release would be compatible “with the welfare of society.” *McRae v. Hyman*, App. D.C., 667 A.2d 1356 (1995).

Cited in *De Benque v. United States*, 85 F.2d 202 (D.C. Cir.), cert. denied, 298 U.S. 681, 56 S. Ct. 960, 80 L. Ed. 1402 (1936); *United States v. Alston*, App. D.C., 412 A.2d 351 (1980); *Cosgrove v. Smith*, 697 F.2d 1125 (D.C. Cir. 1983); *Cosgrove v. Thornburgh*, 703 F. Supp. 995 (D.D.C. 1988).

§ 24-205. Arrest for violation of parole.

If said Board of Parole, or any member thereof, shall have reliable information that a prisoner has violated his parole, said Board, or any member thereof, at any time within the term or terms of the prisoner’s sentence, may issue a warrant to any officer hereinafter authorized to execute the same for the retaking of such prisoner. Any officer of the District of Columbia penal institutions, any officer of the Metropolitan Police Department of the District of Columbia, or any federal officer authorized to serve criminal process within the United States to whom such warrant shall be delivered is authorized and required to execute such warrant by taking such prisoner and returning or removing him to the penal institution of the District of Columbia from which he was paroled or to such penal or correctional institution as may be designated by the Attorney General of the United States. (July 15, 1932, 47 Stat. 698, ch. 492, § 5; June 6, 1940, 54 Stat. 242, ch. 254, § 4; July 17, 1947, 61 Stat. 378, ch. 263, § 2; 1973 Ed., § 24-205.)

Cross references. — As to this section’s inapplicability to federal sentences for continu-

ing criminal enterprises, see 21 U.S.C. § 848(d).

As to representation of indigents, see §§ 1-2702 and 11-2601.

As to rewards for apprehension of parole violators, see § 24-426.

Section references. — This section is referred to in § 24-207.

Board secures its jurisdiction over parolee by issuing violation warrant before date of parole expiration, and such jurisdiction is not lost simply because board chooses to delay revoking parole until intervening criminal sentence has been fully served. *Sutherland v. District of Columbia Bd. of Parole*, 366 F. Supp. 270 (D.D.C. 1973).

Authority of trial court. — Trial court had no discretion under this section to stay execution of parole violation warrant. *Poteat v. United States*, App. D.C., 559 A.2d 334 (1989).

Probationer subject to probation conditions even in jail. — When a probationer was actually serving a jail sentence while on probation with respect to another sentence, even in jail, he was subject to the conditions of the probation and by its terms he was to refrain from violation of law. *Burns v. United States*, 287 U.S. 216, 53 S. Ct. 154, 77 L. Ed. 266 (1932).

Unexpired portion of a parole violator's original sentence begins to run not when he is in prison by arrest or conviction for a new and separate offense but only when his parole has been revoked and he has been returned to custody of revoking authority. *Noll v. Board of Parole for Gov't*, 191 F.2d 653 (D.C. Cir. 1951).

Application of District law to prisoner convicted of federal crime. — The Board did not err in acting pursuant to District of Columbia law with regard to prisoner who had been convicted of a federal crime, since the act establishing the Board transferred to it authority over prisoners held in District prisons, and provisions of this subchapter, rather than federal parole law, were to be applied to such prisoners. *Howerton v. Rivers*, 326 F.2d 653 (D.C. Cir. 1963).

Expiration of Board's jurisdiction over mandatory releasee. — One hundred eighty days before the expiration of a maximum 5-year term, a mandatory releasee's release became unconditional, he was no longer deemed as if

released on parole, the Board of Parole no longer had jurisdiction over him, the Board had no authority to issue parole violation warrant on basis of prior parole violations and releasee could not be required to serve the full 5-year term. *Birch v. Anderson*, 358 F.2d 520 (D.C. Cir. 1965).

Board's jurisdiction over District parolee subsequently confined in federal penitentiary. — Where a prisoner was released from the District of Columbia Reformatory on parole, but a warrant was subsequently issued against him for violation of that parole and he was confined at a federal penitentiary in Kansas upon conviction of a new and separate offense, the Board of Parole did not lose its jurisdiction over petitioner to federal parole board. *Noll v. Board of Parole for Gov't*, 191 F.2d 653 (D.C. Cir. 1951).

Board's 7-month delay in executing parole violator's warrant was not unreasonable, especially since reason for delay was to allow accused to serve 2 intervening sentences. *Ginyard v. Clemmer*, 357 F.2d 291 (D.C. Cir. 1966).

Effect of detention in places other than District. — Where a prisoner was released from the District of Columbia Reformatory on parole but a subsequent warrant was issued for violation of that parole, the fact that the prisoner had served time in various places of detention other than in the District did not fulfill the requirement of serving his District of Columbia sentence. *Noll v. Board of Parole for Gov't*, 191 F.2d 653 (D.C. Cir. 1951).

Consecutive sentence for conviction of crime committed while on parole. — A petition for writ of habeas corpus, on the ground that petitioner's confinement after expiration of his sentence was illegal, was denied where petitioner had committed a crime while on parole, and the judge imposing the second sentence had no power to make it and the unexpired portion of the first sentence run concurrently. *Hammerer v. Huff*, 110 F.2d 113 (D.C. Cir. 1939).

Cited in *United States v. Alston*, App. D.C., 412 A.2d 351 (1980); *Rosemond v. Whitfield*, App. D.C., 474 A.2d 821 (1983).

§ 24-206. Hearing after arrest; confinement in non-District institution.

(a) When a prisoner has been retaken upon a warrant issued by the Board of Parole, he shall be given an opportunity to appear before the Board, a member thereof, or an examiner designated by the Board. At such hearing he may be represented by counsel. The Board may then, or at any time in its discretion, terminate the parole or modify the terms and conditions thereof. If the order of parole shall be revoked, the prisoner, unless subsequently

reparoled, shall serve the remainder of the sentence originally imposed less any commutation for good conduct which may be earned by him after his return to custody. For the purpose of computing commutation for good conduct, the remainder of the sentence originally imposed shall be considered as a new sentence. The time a prisoner was on parole shall not be taken into account to diminish the time for which he was sentenced.

(b) In the event a prisoner is confined in, or as a parolee is returned to a penal or correctional institution other than a penal or correctional institution of the District of Columbia, the Board of Parole created by § 723a of Title 18, United States Code, shall have and exercise the same power and authority as the Board of Parole of the District of Columbia had the prisoner been confined in or returned to a penal or correctional institution of the District of Columbia. (July 15, 1932, 47 Stat. 698, ch. 492, § 6; June 6, 1940, 54 Stat. 242, ch. 254, § 5; July 17, 1947, 61 Stat. 379, ch. 263, § 5; 1973 Ed., § 24-206.)

Cross references. — As to this section's inapplicability to federal sentences for continuing criminal enterprises, see 21 U.S.C. § 848(d).

As to representation of indigents, see §§ 1-2702 and 11-2601.

Section references. — This section is referred to in §§ 4-134 and 24-207.

References in text. — Section 723a of Title 18 of the United States Code, referred to in subsection (b) of this section, was repealed by the Act of June 25, 1948, 62 Stat. 862, ch. 645, § 21.

Board secures its jurisdiction over parolee by issuing violation warrant before date of parole expiration, and such jurisdiction is not lost simply because board chooses to delay revoking parole until intervening criminal sentence has been fully served. *Sutherland v. District of Columbia Bd. of Parole*, 366 F. Supp. 270 (D.D.C. 1973).

Board is vested with broad discretion in the dispositional process. *Shelton v. United States Bd. of Parole*, 388 F.2d 567 (D.C. Cir. 1967).

Granting or revocation of parole is within discretion of the Board. *In re Tate*, 63 F. Supp. 961 (D.D.C.), *aff'd*, 156 F.2d 848 (D.C. Cir. 1946).

But Board cannot act in disregard of facts. — Under this section, parolee should be permitted to present any pertinent matter, and, although Board's discretion in continuing or revoking parole is uncontrolled, it cannot act in disregard of facts or refuse to hear argument. *Fleming v. Tate*, 156 F.2d 848 (D.C. Cir. 1946).

Board has a wide choice of dispositional alternatives: (1) It may excuse the violation altogether and withdraw its warrant; (2) it may immediately revoke parole; and (3) it may withhold revocation until parolee has completed service of his intervening sentence and then revoke parole. *Shelton v. United States Bd. of Parole*, 388 F.2d 567 (D.C. Cir. 1967).

Defendant's Fifth Amendment rights were violated by parole revocation based on a preliminary interview before the Parole Board in which the parole officer testified that his only knowledge of the alleged parole violation came from a Pretrial Services Agency report that the defendant had been arrested. *Matthews v. Palmer*, 113 WLR 2473 (Super. Ct. 1985).

Considerations in determining appropriateness of reincarceration. — The board must consider mitigating circumstances and rehabilitative potential as well as existence of parole violations before determining that reincarceration is appropriate. *Sutherland v. District of Columbia Bd. of Parole*, 366 F. Supp. 270 (D.D.C. 1973).

Disposition of consequences of parole violation. — Where the fact of a parole violation has been conclusively established by an adjudication, either state or federal, that a criminal offense was committed during release period, a parole violator may apply to the Board for immediate determination of disposition to be made concerning consequences of his parole violation and to seek what is in effect concurrent service on all, or a part of, the unexpired portion of his original sentence with the sentence imposed for criminal offense which constituted the parole violation. *Shelton v. United States Bd. of Parole*, 388 F.2d 567 (D.C. Cir. 1967).

Federal prisoner has right to prompt parole revocation hearing on parole revocation detainer warrant lodged against him while he was serving 10-year term in federal penitentiary, and the Board could not wait until prisoner's current sentence had been served before holding hearing or revoking parole. *Sutherland v. District of Columbia Bd. of Parole*, 366 F. Supp. 270 (D.D.C. 1973).

This section contemplates an effective appearance and not the mere physical

presence of prisoner, and implies that he must be given a hearing wherein he is entitled to be represented by retained counsel, present evidence, and adduce witnesses. *In re Tate*, 63 F. Supp. 961 (D.D.C.), *aff'd*, 156 F.2d 848 (D.C. Cir. 1946).

An opportunity to appear before the Board means an effective appearance, including presence of counsel, if desired by prisoner, and receipt of testimony if he has testimony to present. *Fleming v. Tate*, 156 F.2d 848 (D.C. Cir. 1946).

Under this section, a summary and informal hearing is sufficient. *In re Tate*, 63 F. Supp. 961 (D.D.C.), *aff'd*, 156 F.2d 848 (D.C. Cir. 1946).

Alleged parole violator was entitled to present testimony of witnesses appearing voluntarily. *Reed v. Butterworth*, 297 F.2d 776 (D.C. Cir. 1961).

But testimony not governed by strict rules of evidence. — Although a parole violator is entitled to present testimony at a hearing before the Board, it is not required that the receipt of testimony be governed by strict rules of evidence. *Fleming v. Tate*, 156 F.2d 848 (D.C. Cir. 1946).

Alleged parole violator was entitled to counsel at hearing. *Reed v. Butterworth*, 297 F.2d 776 (D.C. Cir. 1961).

And such right to counsel is included in opportunity to appear before Board. — Under this section, an opportunity to appear before the Board at hearing on revocation of his parole includes the right to counsel if the prisoner so elects. *Moore v. Reid*, 246 F.2d 654 (D.C. Cir. 1957).

Under this section, the right of counsel is statutory and not constitutional, and prisoner would not be entitled to have counsel assigned to represent him. *In re Tate*, 63 F. Supp. 961 (D.D.C.), *aff'd*, 156 F.2d 848 (D.C. Cir. 1946).

Participation by counsel in proceedings against parole violator need be no greater than necessary to insure that the Board is accurately informed from parolee's standpoint before it acts, and permitted presentation of testimony by parolee is governed by same rule. *Fleming v. Tate*, 156 F.2d 848 (D.C. Cir. 1946).

Statements to hearing examiners. — Under subsection (a), making statements to the hearing examiner is tantamount to a statement to the Parole Board. *Bennett v. Ridley*, App. D.C., 633 A.2d 824 (1993).

District Court had no jurisdiction to review on merits a revocation of parole by Board on a writ of habeas corpus, and only issue was whether petitioner had been deprived of his legal rights by manner in which revocation hearing was conducted. *In re Tate*, 63 F. Supp. 961 (D.D.C.), *aff'd*, 156 F.2d 848 (D.C. Cir. 1946).

Judicial review of Board's decision. — The Board's selection of a particular disposition, after full and fair consideration of available facts, may be regarded as almost unreviewable, but failure to afford a procedure whereby violator may seek a favorable disposition, or an outright refusal to consider proffered evidence in mitigation, is not immune from judicial overview. *Shelton v. United States Bd. of Parole*, 388 F.2d 567 (D.C. Cir. 1967).

Judicial review available only after administrative remedies exhausted. — Judicial review of dispositional phase of parole revocation proceedings is available, if at all, only after the violator has pursued his administrative remedies. *Shelton v. United States Bd. of Parole*, 388 F.2d 567 (D.C. Cir. 1967).

Effect of new Board regulations on pending appeals. — Where the Board had issued new regulations concerning the processing and disposition of applications for withdrawal or execution of parole violator warrants prior to expiration of the intervening sentence, appeals not otherwise disposed of would be remanded so that petitioners might pursue the administrative remedies provided in those regulations. *Shelton v. United States Bd. of Parole*, 388 F.2d 567 (D.C. Cir. 1967).

Conditions upon release in case of good conduct deductions. — The Board has power to impose conditions upon release of a prisoner who had served full time of sentence with deductions for good conduct and in event of violation of conditions to recommit him to serve out balance of his term. *Gould v. Green*, 141 F.2d 533 (D.C. Cir. 1944).

Expiration of Board's jurisdiction with respect to mandatory release. — The Board's jurisdiction to issue a violator warrant with respect to a mandatory release terminates 180 days before expiration of the maximum sentence. *Shelton v. United States Bd. of Parole*, 388 F.2d 567 (D.C. Cir. 1967).

Effect of Board's failure to give immediate revocation hearing. — Failure of the Board to give an immediate hearing and revoke parole when a paroled prisoner was returned to reformatory pursuant to sentences for crimes committed while on parole did not permit parole to continue running in satisfaction of original sentences after prisoner's reentry of the reformatory. *Washington v. Clemmer*, 169 F.2d 300 (D.C. Cir. 1948).

Violation of parole forfeits defendant's right to commutation. — Any right to commutation which the defendant may have earned for good conduct at any time prior to his recommitment was conditional and was forfeited by violation of parole. *Jones v. Clemmer*, 163 F.2d 852 (D.C. Cir. 1947).

Unexpired portion of a parole violator's original sentence begins to run not when he is in prison by arrest or conviction for a new

and separate offense but only when his parole has been revoked and he has been returned to custody of revoking authority. *Noll v. Board of Parole for Gov't*, 191 F.2d 653 (D.C. Cir. 1951).

Time spent on parole not credited against remaining sentence. — A prisoner is not entitled, on return to prison following revocation of parole, to credit against remaining sentence for time spent on parole. *Bates v. Rivers*, 323 F.2d 311 (D.C. Cir. 1963); *Howerton v. Rivers*, 326 F.2d 653 (D.C. Cir. 1963).

Release date extended by time spent on parole before violation. — The fact that a prisoner had not been released by the time of his maximum release date was not a basis for concluding that he was being unlawfully held by the Board in violation of his rights to due process where, as a parole violator during term of his original sentence, he was required to return to incarceration to serve balance of sentence and lost time which he spent on parole before violation, practical effect of which was to extend ultimate release date. *Arrington v. McGruder*, 490 F.2d 795 (D.C. Cir. 1974).

Amendment of 1947 to be liberally construed. — The 1947 amendment to this section, permitting a parole violator upon recommitment to earn commutation for good conduct, is remedial and is to be construed liberally. *Jones v. Clemmer*, 163 F.2d 852 (D.C. Cir. 1947).

And extends to sentences imposed prior to amendment. — The 1947 amendment to this section permitting a parole violator to earn commutation for good conduct applies to service of the remainder of sentences after recommitment, although the sentences were originally imposed prior to such amendment. *Jones v. Clemmer*, 163 F.2d 852 (D.C. Cir. 1947).

Violation of right to appear entitled prisoner to release. — Where, at hearing before the Board to revoke a parole, parolee's counsel was not permitted to appear, parolee's employer was not permitted to testify, and parole was revoked, parolee's right under this section to appear before the Board was violated and parolee would be discharged on habeas corpus without prejudice to subsequent proceedings for revocation of his parole in conformity with this section. *In re Tate*, 63 F. Supp.

961 (D.D.C.), *aff'd*, 156 F.2d 848 (D.C. Cir. 1946).

Failure to have counsel present effectively denied appearance before Board. — Where a person was arrested and imprisoned for violation of conditional release and brought before the Board for hearing on revocation of conditional release, under the circumstances, his failure to have counsel present at the hearing was critical and effectively denied him of his statutory right to appear before board. *Moore v. Reid*, 246 F.2d 654 (D.C. Cir. 1957).

Counsel's absence from hearing warranted setting aside revocation order. — Where a violation of parole consisted in not reporting to parole headquarters immediately upon release and parolee remained at liberty 4 years without acquiring any criminal record, and his parole had been mandatory, the absence of counsel at parole revocation proceeding warranted setting aside order of revocation. *Baker v. Sard*, 486 F.2d 415 (D.C. Cir. 1972).

Effect of detention in places other than District. — Where a prisoner was released from the District of Columbia Reformatory on parole but a subsequent warrant was issued for violation of that parole, the fact that the prisoner had served time in various places of detention other than in the District did not fulfill the requirement of serving his District of Columbia sentence. *Noll v. Board of Parole for Gov't*, 191 F.2d 653 (D.C. Cir. 1951).

Board's jurisdiction over District parolee subsequently confined in federal penitentiary. — Where a prisoner was released from the District of Columbia Reformatory on parole, but a warrant was subsequently issued against him for violation of that parole and he was confined at a federal penitentiary in Kansas upon conviction of a new and separate offense, the Board of Parole did not lose its jurisdiction over petitioner to federal parole board. *Noll v. Board of Parole for Gov't*, 191 F.2d 653 (D.C. Cir. 1951).

Cited in *United States v. Alston*, App. D.C., 412 A.2d 351 (1980); *Rosemond v. Whitfield*, App. D.C., 474 A.2d 821 (1983); *Luck v. District of Columbia*, App. D.C., 617 A.2d 509 (1992); *Noble v. United States Parole Comm'n*, 887 F. Supp. 11 (D.D.C. 1995).

§ 24-207. Repeal of inconsistent laws; savings provision.

All acts or parts of acts inconsistent with the provisions of §§ 22-2601, 24-201, 24-202 to 24-209, and 24-425 are hereby repealed; provided, however, that for any felony committed before July 15, 1932, the penalty, sentence, or forfeiture provided by law for such felony at the time such felony was committed shall remain in full force and effect and shall be imposed, notwithstanding said sections. (July 15, 1932, 47 Stat. 698, ch. 492, § 7; 1973 Ed., § 24-207.)

References in text. — Sections 24-201 and 24-202, referred to in this section, were repealed by the Act of July 17, 1947, 61 Stat. 379, ch. 263, § 7.

Intent of section. — This section was in-

tended to repeal those provisions of existing acts requiring the imposition of a definite, as distinguished from an indeterminate, sentence. *Anderson v. Rives*, 85 F.2d 673 (D.C. Cir. 1936).

§ 24-208. Prisoners who may be paroled.

(a) The power of the Board of Parole shall extend to all prisoners whose sentences exceed 180 days regardless of the nature of the offense; provided, that in the case of a prisoner convicted of an offense other than a felony, including violations of municipal regulations and ordinances and Acts of Congress in the nature of municipal regulations and ordinances, the prisoner may not be paroled until he has served one-third of the sentence imposed, and in the case of 2 or more sentences for other than a felony, no parole may be granted until after the prisoner has served one-third of the aggregate sentences imposed.

(b) A person convicted of a crime of violence as defined by § 22-3201, shall not be paroled prior to serving 85% of the minimum sentence imposed; provided, that any mandatory minimum sentence shall be served in its entirety. (July 15, 1932, 47 Stat. 698, ch. 492, § 9; June 6, 1940, 54 Stat. 242, ch. 254, § 7(a); July 17, 1947, 61 Stat. 379, ch. 263, § 6; 1973 Ed., § 24-208; Aug. 20, 1994, D.C. Law 10-151, § 801, 41 DCR 2608.)

Section references. — This section is referred to in §§ 24-207 and 24-263.

Effect of amendments. — D.C. Law 10-151 added (b).

Emergency act amendments. — For temporary amendment of section, see § 801 of the Omnibus Criminal Justice Reform Emergency Amendment Act of 1994 (D.C. Act 10-255, June 22, 1994, 41 DCR 4286).

Legislative history of Law 10-151. — Law 10-151, the “Omnibus Criminal Justice Reform Amendment Act of 1994,” was introduced in

Council and assigned Bill No. 10-98, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on March 29, 1994, and April 12, 1994, respectively. Signed by the Mayor on May 4, 1994, it was assigned Act No. 10-238 and transmitted to both Houses of Congress for its review. D.C. Law 10-151 became effective on August 20, 1994.

Cited in *Gould v. Green*, 141 F.2d 533 (D.C. Cir. 1944); *United States v. Joseph*, 122 WLR 2337 (Super. Ct. 1994).

§ 24-209. Federal Parole Board.

The Board of Parole created by § 723a of Title 18, United States Code, shall have and exercise the same power and authority over prisoners convicted in the District of Columbia of crimes against the United States or now or hereafter confined in any United States penitentiary or prison (other than the penal institutions of the District of Columbia) as is vested in the District Board of Parole over prisoners confined in the penal institutions of the District of Columbia. (July 15, 1932, ch. 492, § 10; June 5, 1934, 48 Stat. 880, ch. 391; 1973 Ed., § 24-209.)

Section references. — This section is referred to in § 24-207.

References in text. — Section 723a of Title 18, U.S. Code, referred to in this section, was repealed by the Act of June 25, 1948, 62 Stat. 862, Ch. 645, § 21.

The Board of Indeterminate Sentence and Parole was replaced by the Board of Parole pursuant to the Act of July 17, 1947, 61 Stat. 378, Ch. 263.

Purpose. — This section reconciles the differences between the D.C. Board of Parole and

the U.S. Parole Commission. *Crum v. United States Parole Comm'n*, 814 F. Supp. 1 (D.D.C. 1993).

Reference to prisoners "confined in" is used in this section to designate a group of persons by institutions rather than to delimit powers of District board to such persons only while they are in confinement. *Ex parte Gould*, 51 F. Supp. 354 (D.D.C. 1943).

Power to impose conditions on release of United States prisoners. — The power of the United States Board of Parole to impose conditions on the release of United States prisoners in penal institutions of the District of Columbia on account of deductions for good conduct passed from United States Board of Parole to the District Board under this subchapter. *Ex parte Gould*, 51 F. Supp. 354 (D.D.C. 1943).

Power of federal board to supervise released prisoners. — This subchapter does not restrict in any way the power of the United States Board of Parole to supervise prisoners released on parole from institutions other than those in the District. *Story v. Rives*, 97 F.2d 182 (D.C. Cir.), cert. denied, 305 U.S. 595, 59 S. Ct. 71, 83 L. Ed. 377 (1938).

Federal authorities may make parole decisions about D.C. Code offenders committed to them. *Cosgrove v. Smith*, 697 F.2d 1125 (D.C. Cir. 1983).

Parolee under jurisdiction of U.S. Parole Commission. — Parolee who was incarcerated in a federal penal facility and who violated terms of parole was under the jurisdiction of the U.S. Parole Commission, even though he was a parolee from a D.C. Code violation and was held in a D.C. jail following his parole violation. *Crum v. United States Parole Comm'n*, 814 F. Supp. 1 (D.D.C. 1993).

Jurisdiction over District parolee subsequently confined in federal penitentiary. — Where a prisoner was released from the District of Columbia Reformatory on parole, but a warrant was subsequently issued against him for violation of that parole and he was confined at a federal penitentiary in Kansas upon conviction of a new and separate offense, the District of Columbia Board of Parole did not lose its jurisdiction over petitioner to federal parole board. *Noll v. Board of Parole for Gov't*, 191 F.2d 653 (D.C. Cir. 1951).

Disregard of parole hearing set by D.C. Parole Board. — The United States Parole

Commission's decision to disregard a parole hearing originally set by the District of Columbia Parole Board prior to the prisoner's transfer into the federal system and under its authority was fully within its power once he fell within the Commission's jurisdiction. *Morgan v. District of Columbia*, 618 F. Supp. 754 (D.D.C. 1985).

District court reorganization irrelevant to question of applicability of parole law. — The District's court reorganization had nothing to do with the question of which parole law applied; indeed, to some extent that question remains open. *Allen v. District of Columbia Hacker's License Appeal Bd.*, App. D.C., 471 A.2d 271 (1984).

Applicability of local parole laws and guidelines. — The legislative history and past judicial interpretations of this section suggest that Congress meant for all District of Columbia parole laws to be utilized by the United States Commission in rendering parole determinations for D.C. offenders in federal custody. *Cosgrove v. Thornburgh*, 703 F. Supp. 995 (D.D.C. 1988).

Parole guidelines have the force of law and thus are part of the "power and authority" vested in the District of Columbia Parole Board and granted to the U.S. Parole Commission pursuant to this section. Accordingly, D.C. parole guidelines must be applied to D.C. Code offenders incarcerated in federal institutions. *Cosgrove v. Thornburgh*, 703 F. Supp. 995 (D.D.C. 1988).

This section authorizes the United States Parole Commission to make parole decisions for D.C. Code offenders housed in federal prisons and requires the Parole Commission to apply District of Columbia law. *Franklin v. Ridley*, App. D.C., 635 A.2d 356 (1993).

Time credits. — Where federal prison released defendant on probation, rather than on parole, in accordance with § 24-104, defendant was not entitled to credit for his time on release. *Franklin v. Ridley*, App. D.C., 635 A.2d 356 (1993).

Cited in *Jones v. Jackson*, App. D.C., 416 A.2d 249 (1980); *United States v. Redwood*, 110 WLR 1485 (Super. Ct. 1982); *Mitchner v. United States*, App. D.C., 531 A.2d 666 (1987); *Noble v. United States Parole Comm'n*, 887 F. Supp. 11 (D.D.C. 1995).

Subchapter II. Interstate Parole and Probation Compact.

§ 24-251. Authority of Mayor to execute Interstate Parole and Probation Compact.

The Mayor of the District of Columbia is hereby authorized to execute a compact on behalf of the District of Columbia with any of the states legally joining therein in the form substantially as set out in this section.

INTERSTATE PAROLE AND PROBATION COMPACT

The Contracting States Solemnly Agree That:

(1) It shall be competent for the duly constituted judicial and administrative authorities of a state party to this compact (herein called "sending state"), to permit any person convicted of an offense within such state and placed on probation or released on parole to reside in any other state party to this compact (herein called "receiving state"), while on probation or parole, if

(a) Such person is in fact a resident of or has his family residing within the receiving state and can obtain employment there;

(b) Though not a resident of the receiving state and not having his family residing there, the receiving state consents to such person's being sent there.

Before granting such permission, opportunity shall be granted to the receiving state to investigate the home and prospective employment of such person. A resident of the receiving state, within the meaning of this section, is one who has been an actual inhabitant of such state continuously for more than one year prior to his coming to the sending state and has not resided within the sending state more than six continuous months immediately preceding the commission of the offense for which he has been convicted.

(2) Each receiving state will assume the duties of visitation of and supervision over probationers or parolees of any sending state and in the exercise of those duties will be governed by the same standards that prevail for its own probationers and parolees.

(3) Duly accredited officers of a sending state may at all times enter a receiving state and there apprehend and retake any person on probation or parole. For that purpose no formalities will be required other than establishing the authority of the officer and the identity of the person to be retaken. All legal requirements to obtain extradition of fugitives from justice are hereby expressly waived on the part of the states party hereto, as to such persons. The decision of the sending state to retake a person on probation or parole shall be conclusive upon and not reviewable within the receiving state: Provided, however, that if at the time when a state seeks to retake a probationer or parolee there should be pending against him within the receiving state any criminal charge, or he should be suspected of having committed within such a state a criminal offense, he shall not be retaken without the consent of the receiving state until discharged from prosecution or from imprisonment for such offense.

(4) The duly accredited officers of the sending state will be permitted to transport prisoners being retaken through any and all states parties to this compact, without interference.

(5) The Governor of each state may designate an officer who, acting jointly with like officers of other contracting states, if and when appointed, shall promulgate such rules and regulations as may be deemed necessary to more effectively carry out the terms of this compact.

(6) This compact shall become operative immediately upon its execution by any state as between it and any other state or states so executing. When executed it shall have the full force and effect of law within such state, the form of execution to be in accordance with the laws of the executing state.

(7) This compact shall continue in force and remain binding upon each executing state until renounced by it. The duties and obligations hereunder of a renouncing state shall continue as to parolees or probationers residing therein at the time of withdrawal until retaken or finally discharged by the sending state. Renunciation of this compact shall be by the same authority which executed it, by sending six months' notice in writing of its intention to withdraw from the compact to the other states party hereto. (1973 Ed., § 24-251; Mar. 12, 1976, D.C. Law 1-51, § 2, 22 DCR 5296.)

Legislative history of Law 1-51. — Law 1-51, the “Interstate Parole and Probation Compact Act,” was introduced in Council and assigned Bill No. 1-91, which was referred to the Committee on Public Safety. The Bill was adopted on first and second readings on November 4, 1975 and November 18, 1975, respectively. Signed by the Mayor on December 4, 1975, it was assigned Act No. 1-71 and transmitted to both Houses of Congress for its review.

In limited circumstance when misdemeanor probationer’s supervision is

transferred to receiving state under Interstate Parole and Probation Compact, the Superior Court’s arguably geographically limited authority for issuance of a misdemeanor warrant under § 23-563(b) is irrelevant; insofar as the warrant is signed without territorial limitation directed to the United States Marshal, it constitutes a direction to an officer of this court to “apprehend and retake” a probationer under paragraph (3) of this section and must accordingly be so honored. *United States v. Hanna*, 114 WLR 1153 (Super. Ct. 1986).

§ 24-252. Definitions.

As used in this subchapter, the term “state” means any of the several states of the United States, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, and the District of Columbia, and the term “Governor” means the chief executive officer of any such jurisdiction. (1973 Ed., § 24-252; Mar. 12, 1976, D.C. Law 1-51, § 3, 22 DCR 5299.)

Legislative history of Law 1-51. — See note to § 24-251.

§ 24-253. Severability.

If any section or provision of this subchapter is held to be unconstitutional or invalid, such unconstitutionality or invalidity shall not affect the remaining sections or provisions of this subchapter. (1973 Ed., § 24-253; Mar. 12, 1976, D.C. Law 1-51, § 4, 22 DCR 5299.)

Legislative history of Law 1-51. — See note to § 24-251.

Subchapter III. Medical and Geriatric Parole.

§ 24-261. Definitions.

For the purposes of this subchapter, the term:

(1) “Geriatric inmate” means a person 65 years of age or older convicted of a violation of a District of Columbia criminal law by a court in the District of Columbia, who suffers from a chronic infirmity, illness, or disease related to aging, and poses a low risk to the community;

(2) “Permanently incapacitated inmate” means a person convicted of a violation of a District of Columbia criminal law by a court in the District of Columbia and who, by reason of an existing physical or medical condition which is not terminal, is permanently and irreversibly physically incapacitated, and who does not constitute a danger to himself or to society; and

(3) “Terminally ill inmate” means a person convicted of a violation of the District of Columbia criminal law by a court in the District of Columbia who has an incurable condition caused by illness or disease which would, within reasonable medical judgment, produce death within 6 months and does not constitute a danger to himself or to society. (May 15, 1993, D.C. Law 9-271, § 2, 40 DCR 792.)

Section references. — This section is referred to in § 24-262.

Legislative history of Law 9-271. — Law 9-271, the “Medical and Geriatric Parole Act of 1992,” was introduced in Council and assigned Bill No. 9-557 which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on December 1, 1992, and December 15, 1992, respectively. Signed by the Mayor on January 14, 1993, it was assigned Act No. 9-400 and transmitted to both Houses of Congress for its review. D.C. Law 9-271 became effective on May 15, 1993.

Mayor authorized to issue rules. — Section 9 of D.C. Law 9-271 provided that the Mayor shall issue rules necessary to carry out the provisions of the act pursuant to subchapter I of Chapter 15 of Title 1.

Entitlement to public assistance. — Section 10 of D.C. Law 9-271 provided that notwithstanding subchapter V of Chapter 2 of Title 3, medical and geriatric parolees shall be entitled to general public assistance pending their application for eligibility.

§ 24-262. Conditions present at time of sentencing excluded.

No physical or medical condition set forth in § 24-261 which existed at the time of sentencing shall provide the basis for geriatric or medical parole under this subchapter. (May 15, 1993, D.C. Law 9-271, § 3, 40 DCR 792.)

Legislative history of Law 9-271. — See note to § 24-261.

§ 24-263. Board of Parole authority.

(a) The Board of Parole (“Board”) shall establish a medical and geriatric parole program to be administered by the Department of Corrections (“Depart-

ment”). The authority to grant medical or geriatric parole shall rest solely with the Board. The Department shall determine for each person considered for geriatric or medical parole, whether the person is a:

- (1) Geriatric inmate;
- (2) Permanently incapacitated inmate; or
- (3) Terminally ill inmate.

(b) Notwithstanding § 24-208, inmates who have not served their minimum sentences shall be considered eligible for parole under this section. Medical and geriatric parole consideration shall be in addition to any other parole for which an inmate may be eligible.

(c) The Board shall determine the appropriate level of supervision and shall develop a comprehensive discharge plan for each inmate released under this subchapter.

(d) In considering an inmate for medical or geriatric parole, the Board may request that additional medical evidence be produced or that additional medical examinations be conducted.

(e) The parole term of an inmate on medical parole shall be for the remainder of the inmate’s sentence, without diminution of sentence for good behavior. In addition to terms and conditions prescribed by the Board, supervision of an inmate on medical or geriatric parole shall also consist of periodic medical evaluations at intervals to be determined by the Board at the time of release.

(f) The chairperson of the Board shall report annually to the Mayor, the Chairpersons of the Council of the District of Columbia, and the Council’s Committee on the Judiciary, the number of applications for medical and geriatric parole, the nature of the illness, disease, or condition of the applicants, the reasons for denial of applications for medical or geriatric parole, the number of persons on medical and geriatric parole who have been returned to the custody of the Department, and the reasons for their return. (May 15, 1993, D.C. Law 9-271, § 4, 40 DCR 792.)

Legislative history of Law 9-271. — See note to § 24-261.

§ 24-264. Medical parole.

(a) The Department shall identify permanently incapacitated and terminally ill inmates for consideration for medical parole based solely on medical documentation. The Department shall forward an application and documentation in support of parole eligibility to the Board within 15 days of receipt of an application. The documentation shall include information concerning the inmate’s medical history and prognosis, institutional behavior and adjustment, and criminal history. The inmate or inmate’s representative may submit an application to the Board.

(b) Whenever it shall appear to the Board that because of a medical condition an inmate is permanently incapacitated or terminally ill, and the inmate’s parole is not incompatible with the welfare of society, the Board may

authorize the inmate's release on medical parole upon terms and conditions as the Board shall from time to time prescribe.

(c) The Board shall make a determination whether to grant medical parole within 15 days of receipt of an application and supporting documentation from the Department. (May 15, 1993, D.C. Law 9-271, § 5, 40 DCR 792.)

Legislative history of Law 9-271. — See note to § 24-261.

§ 24-265. Conditions for geriatric release.

(a) A geriatric inmate who is 65 years of age or older, has a chronic infirmity, illness, or disease, and who poses a low risk to the community, may be eligible for parole as determined by the Board.

(b) Consideration for geriatric parole shall be initiated by the submission of an application from the Department, the inmate, or the inmate's representative and the Department's supporting documentation to the Board.

(c) In determining eligibility for geriatric release, the Board shall take into consideration the following factors:

- (1) Age of inmate;
- (2) Severity of illness, disease, or infirmities;
- (3) Comprehensive health evaluation;
- (4) Institutional behavior;
- (5) Level of risk for violence;
- (6) Criminal history; and

(7) Alternatives to maintaining geriatric long-term prisoners in traditional prison settings.

(d) The Department shall submit an application for geriatric release with supporting documentation to the Board within 30 days of receipt of an application.

(e) The Board shall make a determination whether to grant geriatric parole within 30 days of receipt of the application and supporting documentation from the Department. (May 15, 1993, D.C. Law 9-271, § 6, 40 DCR 792.)

Legislative history of Law 9-271. — See note to § 24-261.

§ 24-266. Eligibility for public assistance.

(a) When a person has been granted either medical or geriatric parole and applies for general or public assistance, including medical assistance, the Department shall forward the application for assistance to the Department of Human Services, and advise the Board that an application for assistance has been made.

(b) The Department of Human Services shall, within 60 days of receipt of a medical or geriatric parolee's application for assistance, determine the eligibility of the person for general assistance, public assistance, Medicaid, or any other District or federal medical assistance program.

(c) A person granted medical or geriatric parole shall immediately be eligible for general public assistance for 60 days or until eligibility is determined for any program listed in subsection (b) of this section, whichever is later.

(d) Notwithstanding any other law, when a person is released on medical or geriatric parole and is in need of public assistance, including medical assistance, the Department of Human Services shall be responsible for the administrative costs of the initial and any subsequent eligibility determination and the costs of any public assistance, including medical assistance, following a person's release on medical or geriatric parole for so long as the person is eligible. (May 15, 1993, D.C. Law 9-271, § 7, 40 DCR 792.)

Legislative history of Law 9-271. — See note to § 24-261.

§ 24-267. Exceptions.

Persons convicted of first degree murder or persons sentenced for crimes committed when armed under § 22-3202, or under § 22-3204(b), and § 22-2903, shall not be eligible for geriatric or medical parole. (May 15, 1993, D.C. Law 9-271, § 8, 40 DCR 792; Feb. 5, 1994, D.C. Law 10-68, § 57, 40 DCR 6311; May 16, 1995, D.C. Law 10-255, § 18, 41 DCR 5193; May 25, 1995, D.C. Law 10-258, § 2, 42 DCR 238.)

Effect of amendments. — D.C. Law 10-68 substituted "Law Enforcement Amendment Act of 1989" for "Law Enforcement Assistance Act of 1987," inserted "or" preceding "the Carjacking Prevention Temporary," and deleted "and the Carjacking Prevention Amendment Act of 1993" preceding "shall not."

D.C. Law 10-255 substituted "the Carjacking Prevention Temporary Amendment Act of 1992, and the Carjacking Prevention Amendment Act of 1993" for "or the Carjacking Prevention Temporary Amendment Act of 1992."

D.C. Law 10-258 rewrote this section.

Both D.C. Law 10-255 and D.C. Law 10-258 amended this section. Effect has been given to the changes made by D.C. Law 10-258, as the amendments made by D.C. Law 10-255 are technical in nature.

Legislative history of Law 9-271. — See note to § 24-261.

Legislative history of Law 10-68. — Law 10-68, the "Technical Amendments of 1993," was introduced in Council and assigned Bill No. 10-166, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on June 29, 1993, and July 13, 1993, respectively. Signed by the Mayor on August 23, 1993, it was assigned Act No. 10-107

and transmitted to both Houses of Congress for its review. D.C. Law 10-68 became effective on February 5, 1994.

Legislative history of Law 10-255. — Law 10-255, the "Technical Amendments Act of 1994," was introduced in Council and assigned Bill No. 10-673, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on June 21, 1994, and July 5, 1994, respectively. Signed by the Mayor on July 25, 1994, it was assigned Act No. 10-302 and transmitted to both Houses of Congress for its review. D.C. Law 10-255 became effective May 16, 1995.

Legislative history of Law 10-258. — Law 10-258, the "District of Columbia Nonviolent Offenses Mandatory-Minimum Sentences Amendment Act of 1994," was introduced in Council and assigned Bill No. 10-617, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on November 1, 1994, and December 6, 1994, respectively. Signed by the Mayor on December 28, 1994, it was assigned Act No. 10-392 and transmitted to both Houses of Congress for its review. D.C. Law 10-258 became effective May 25, 1995.

CHAPTER 3. INSANE DEFENDANTS.

Sec.	Sec.
24-301. Commitment during trial; restoration to competency; acquittal by reason of insanity; release after confinement; expenses of confinement; inconsistent statutes superseded;	escaped persons; insanity defense; motions for relief.
	24-302. Commitment while serving sentence.
	24-303. Restoration to sanity.

§ 24-301. Commitment during trial; restoration to competency; acquittal by reason of insanity; release after confinement; expenses of confinement; inconsistent statutes superseded; escaped persons; insanity defense; motions for relief.

(a) If it appears to a court having jurisdiction of: (1) a person arrested, or indicted for, or charged by information with, an offense; or (2) a child subject to a transfer motion in the Family Division of the Superior Court of the District of Columbia pursuant to § 16-2307, that, from the court's own observations or from prima facie evidence submitted to it and prior to the imposition of sentence, the expiration of any period of probation, or the hearing on the transfer motion, as the case may be, such person or child (hereafter in this subsection and subsection (b) of this section referred to as the "accused") is of unsound mind or is mentally incompetent so as to be unable to understand the proceedings against him or properly to assist in his own defense, the court may order the accused committed to the District of Columbia General Hospital or other mental hospital designated by the court, for such reasonable period as the court may determine for examination and observation and for care and treatment if such is necessary by the psychiatric staff of said hospital. If, after such examination and observation, the superintendent of the hospital, in the case of a mental hospital, or the chief psychiatrist of the District of Columbia General Hospital, in the case of District of Columbia General Hospital, shall report that in his opinion the accused is of unsound mind or mentally incompetent, such report shall be sufficient to authorize the court to commit by order the accused to a hospital for the mentally ill unless the accused or the government objects, in which event the court, after hearing without a jury, shall make a judicial determination of the competency of the accused to stand trial or to participate in transfer proceedings. If the court shall find the accused to be then of unsound mind or mentally incompetent to stand trial or to participate in transfer proceedings, the court shall order the accused confined to a hospital for the mentally ill.

(b) Whenever an accused person confined to a hospital for the mentally ill is restored to mental competency in the opinion of the superintendent of said hospital, the superintendent shall certify such fact to the clerk of the court in which the indictment, information, or charge against the accused is pending and such certification shall be sufficient to authorize the court to enter an order thereon adjudicating him to be competent to stand trial or to participate in transfer proceedings, unless the accused or the government objects, in which

event, the court, after hearing without a jury, shall make a judicial determination of the competency of the accused to stand trial or to participate in transfer proceedings.

(c) When any person tried upon an indictment or information for an offense, or tried in the Family Division of the Superior Court of the District of Columbia for an offense, is acquitted solely on the ground that he was insane at the time of its commission, that fact shall be set forth by the jury in their verdict.

(d)(1) If any person tried upon an indictment or information for an offense raises the defense of insanity and is acquitted solely on the ground that he was insane at the time of its commission, he shall be committed to a hospital for the mentally ill until such time as he is eligible for release pursuant to this subsection or subsection (e) of this section.

(2)(A) A person confined pursuant to paragraph (1) of this subsection shall have a hearing, unless waived, within 50 days of his confinement to determine whether he is entitled to release from custody. At the conclusion of the criminal action referred to in paragraph (1) of this subsection, the court shall provide such person with representation by counsel:

(i) In the case of a person who is eligible to have counsel appointed by the court, by continuing any appointment of counsel made to represent such person in the prior criminal action or by appointing new counsel; or

(ii) In the case of a person who is not eligible to have counsel appointed by the court, by assuring representation by retained counsel.

(B) If the hearing is not waived, the court shall cause notice of the hearing to be served upon the person, his counsel, and the prosecuting attorney and hold the hearing. Within 10 days from the date the hearing was begun, the court shall determine the issues and make findings of fact and conclusions of law with respect thereto. The person confined shall have the burden of proof. If the court finds by a preponderance of the evidence that the person confined is entitled to his release from custody, either conditional or unconditional, the court shall enter such order as may appear appropriate.

(3) An appeal may be taken from an order entered upon paragraph (2) of this subsection to the court having jurisdiction to review final judgments of the court entering the order.

(e) Where any person has been confined in a hospital for the mentally ill pursuant to subsection (d) of this section, and the superintendent of such hospital certifies: (1) that such person has recovered his sanity; (2) that, in the opinion of the superintendent, such person will not in the reasonable future be dangerous to himself or others; and (3) in the opinion of the superintendent, the person is entitled to his unconditional release from the hospital, and such certificate is filed with the clerk of the court in which the person was tried, and a copy thereof served on the United States Attorney or the Corporation Counsel of the District of Columbia, whichever office prosecuted the accused, such certificate shall be sufficient to authorize the court to order the unconditional release of the person so confined from further hospitalization at the expiration of 15 days from the time said certificate was filed and served as above; but the court in its discretion may, or upon objection of the United States or the District of Columbia shall, after due notice, hold a hearing at

which evidence as to the mental condition of the person so confined may be submitted, including the testimony of 1 or more psychiatrists from said hospital. The court shall weigh the evidence and, if the court finds that such person has recovered his sanity and will not in the reasonable future be dangerous to himself or others, the court shall order such person unconditionally released from further confinement in said hospital. If the court does not so find, the court shall order such person returned to said hospital. Where, in the judgment of the superintendent of such hospital, a person confined under subsection (d) of this section is not in such condition as to warrant his unconditional release, but is in a condition to be conditionally released under supervision, and such certificate is filed and served as above provided, such certificate shall be sufficient to authorize the court to order the release of such person under such conditions as the court shall see fit at the expiration of 15 days from the time such certificate is filed and served pursuant to this section; provided, that the provisions as to hearing prior to unconditional release shall also apply to conditional releases, and, if, after a hearing and weighing the evidence, the court shall find that the condition of such person warrants his conditional release, the court shall order his release under such conditions as the court shall see fit, or, if the court does not so find, the court shall order such person returned to such hospital.

(f) When an accused person shall be acquitted solely on the ground of insanity and ordered confined in a hospital for the mentally ill, such person and his estate shall be charged with the expense of his support in such hospital.

(g) Nothing herein contained shall preclude a person confined under the authority of this section from establishing his eligibility for release under the provisions of this section by a writ of habeas corpus.

(h) The provisions of this section shall supersede in the District of Columbia the provisions of any federal statutes or parts thereof inconsistent with this section.

(i) When a person has been ordered confined in a hospital for the mentally ill pursuant to this section and has escaped from such hospital, the court which ordered confinement shall, upon request of the government, order the return of the escaped person to such hospital. The return order shall be effective throughout the United States. Any federal judicial officer within whose jurisdiction the escaped person shall be found shall, upon receipt of the return order issued by the committing court, cause such person to be apprehended and delivered up for return to such hospital.

(j) Insanity shall not be a defense in any criminal proceeding in the United States District Court for the District of Columbia or in the Superior Court of the District of Columbia, unless the accused or his attorney in such proceeding, at the time the accused enters his plea of not guilty, or within 15 days thereafter, or at such later time as the court may for good cause permit, files with the court and serves upon the prosecuting attorney written notice of his intention to rely on such defense. No person accused of an offense shall be acquitted on the ground that he was insane at the time of its commission unless his insanity, regardless of who raises the issue, is affirmatively established by a preponderance of the evidence.

(k)(1) A person in custody or conditionally released from custody, pursuant to the provisions of this section, claiming the right to be released from custody, the right to any change in the conditions of his release, or other relief concerning his custody, may move the court having jurisdiction to order his release, to release him from custody, to change the conditions of his release, or to grant other relief.

(2) A motion for relief may be made at any time after a hearing has been held or waived pursuant to subsection (d) (2) of this section.

(3) Unless the motion and the files and records of the case conclusively show that the person is entitled to no relief, the court shall cause notice thereof to be served upon the prosecuting authority, grant a prompt hearing thereon, determine the issues, and make findings of fact and conclusions of law with respect thereto. On all issues raised by his motion, the person shall have the burden of proof. If the court finds by a preponderance of the evidence that the person is entitled to his release from custody, either conditional or unconditional, a change in the conditions of his release, or other relief, the court shall enter such order as may appear appropriate.

(4) A court may entertain and determine the motion without requiring the production of the persons at the hearing.

(5) A court shall not be required to entertain a second or successive motion for relief under this section more often than once every 6 months. A court for good cause shown may in its discretion entertain such a motion more often than once every 6 months.

(6) An appeal may be taken from an order entered under this section to the court having jurisdiction to review final judgments of the court entering the order.

(7) An application for habeas corpus on behalf of a person who is authorized to apply for relief by motion pursuant to this section shall not be entertained if it appears that the applicant has failed to apply for relief, by motion, to the court having jurisdiction to entertain a motion pursuant to this section, unless it also appears that the remedy by motion is inadequate or ineffective to test the validity of his detention. (Mar. 3, 1901, 31 Stat. 1340, ch. 854, § 927; Apr. 14, 1906, 34 Stat. 113, ch. 1624; July 2, 1945, 59 Stat. 311, ch. 217; Aug. 9, 1955, 69 Stat. 609, ch. 673, § 1; Dec. 27, 1967, 81 Stat. 735, Pub. L. 90-226, title II, § 201; July 29, 1970, 84 Stat. 570, Pub. L. 91-358, title I, §§ 155(a), 159(e), title II, § 207; 1973 Ed., § 24-301.)

- I. General Consideration.
- II. Competency to Stand Trial.
- III. Acquittal by Reason of Insanity.
- IV. Insanity Defense.
- V. Release from Confinement.

I. GENERAL CONSIDERATION.

Cross references. — As to representation of indigents by Public Defender Service, see § 1-2702.

As to provisions for hospitalization of mentally ill, see Chapter 5 of Title 21.

As to rewards for apprehension of fugitives

from welfare institutions, see § 24-426.

Section references. — This section is referred to in §§ 1-2702, 16-2307, and 24-303.

This section is constitutional. *Smothers v. United States*, App. D.C., 403 A.2d 306 (1974).

Constitutionality of subsection (j). — Statutory and constitutional holdings of United

States v. Cohen, 674 F.2d 128 (D.C. Cir. 1984), are equally applicable to subsection (j); it is clear that Cohen was interpreting all of this section, not only subsection (d)(1). *United States v. Greene*, 834 F.2d 1067 (D.C. Cir. 1987), cert. denied, 487 U.S. 1238, 108 S. Ct. 2908, 101 L. Ed. 2d 940 (1988).

Due process implicated. — Due process is implicated when the government seeks to revoke a patient's outpatient status. *Reese v. United States*, App. D.C., 614 A.2d 506 (1992).

This section is not in derogation of the common law rights of a defendant committed pursuant to this section. *Tran Van Khiem v. United States*, App. D.C., 612 A.2d 160 (1992), cert. denied, 507 U.S. 924, 113 S. Ct. 1293, 122 L. Ed. 2d 684 (1993).

Civil versus criminal commitment. — The standard for release is the same, regardless of whether a person is civilly committed, committed following the imposition of an insanity defense by the trial court, or committed after pleading not guilty by reason of insanity; however, there is a difference in the procedure for initial commitment, since the civil committee has the right to a jury trial on the questions of mental illness and dangerousness; the criminal acquittee, who has entered a plea of not guilty by reason of insanity, is committed without a prior hearing, and every 6 months thereafter is entitled only to a bench trial at which he, and not the government, bears the burden of proof. *Walls v. United States*, App. D.C., 601 A.2d 54 (1991).

Under *Streicher v. Prescott*, 663 F. Supp. 335 (D.D.C. 1987), the different consequences of a civil and criminal commitment have become greater, and a civil committee is entitled to the appointment of new counsel and a completely new civil commitment proceeding before a jury, at which the government has the burden to show by clear and convincing evidence that he requires hospitalization as the least restrictive alternative. *Walls v. United States*, App. D.C., 601 A.2d 54 (1991).

Civil versus criminal actions. — Although in the previous criminal trial the jury found that the defendant was not sane because the government did not prove his sanity beyond a reasonable doubt, in a civil action, defendant bears the burden of proving that he was insane by a preponderance of the evidence; accordingly, summary judgment for such a defendant is improper as to the issue of recoverability of punitive damages because there is a genuine issue as to defendant's sanity. *Delahanty v. Hinckley*, 799 F. Supp. 184 (D.D.C. 1992).

Juveniles. — Standard of incompetency is defined differently in adult proceedings or proceedings involving juveniles subject to transfer to adult courts under subsection (a) of this section than it is in juvenile proceedings under

§ 16-2315(c). *In re W.F.*, 116 WLR 1913 (Super. Ct. 1988).

This section should be broadly construed. *Marcey v. Harris*, 287 F. Supp. 73 (D.D.C.), modified, 400 F.2d 772 (D.C. Cir. 1968).

Section does not violate equal protection clause. — The procedures enacted by Congress under this section for the automatic commitment to mental institutions of federal criminal defendants who successfully assert the insanity defense do not violate the equal protection component of the due process clause of the Fifth Amendment merely because they are applicable only to persons charged in the District of Columbia. *United States v. Cohen*, 733 F.2d 128 (D.C. Cir. 1984).

Purpose of 1970 amendment. The 1970 amendment to subsection (d) of this section has not altered its original purpose which is first to treat the patient, and second to protect both society and the patient. *Jones v. United States*, App. D.C., 432 A.2d 364 (1981), aff'd, 463 U.S. 354, 103 S. Ct. 3043, 77 L. Ed. 2d 694 (1983).

Effect of subchapter. — The sole effect of this subchapter is to suspend criminal proceedings during the period of insanity but jurisdiction of court continues and when sanity is restored, the case may proceed as if the interregnum had not occurred. *Haislip v. United States*, 129 F.2d 53 (D.C. Cir. 1942).

The sole effect of this section providing for mental examination of person charged with criminal offense before trial is, in a proper case, to suspend criminal proceedings during the period of insanity. *Evans v. United States*, App. D.C., 83 A.2d 876 (1951).

Application of section. — The District of Columbia insanity provisions codified in this section apply to both federal and local charges. *United States v. Henry*, 600 F.2d 924 (D.C. Cir. 1979).

Defendant must personally assert insanity defense under subsection (d) before commitment to hospital for mentally ill will be permitted. *United States v. Potter*, 664 F. Supp. 551 (D.D.C. 1986).

Issue of proper construction of this section is continuing and of public importance, and review is not precluded by mootness. *Shuler v. United States*, App. D.C., 422 A.2d 996 (1980).

Judicial determination required by section. — This section requires a judicial determination of the accused's competency to stand trial, but does not require a determination of whether the accused is of unsound mind. *Williams v. Overholser*, 162 F. Supp. 514 (D.D.C.), modified on other grounds, 259 F.2d 175 (D.C. Cir. 1958).

No hearing required to determine mental patient's competency to refuse drug treatment. — Due process does not require a

court hearing to determine the issue of the competency of an involuntarily committed mental patient to refuse psychotropic drug treatment. *United States v. Leatherman*, 580 F. Supp. 977 (D.D.C. 1983), appeal dismissed, 729 F.2d 863 (D.C. Cir. 1984).

Criminal commitment may not act as procedural mechanism to civilly commit. *In re Nelson*, 112 WLR 1869 (Super. Ct. 1984).

Proper for civil commitment with subsequent criminal proceedings. — A person may be classified as mentally ill and held under civil commitment proceedings while subsequent criminal proceedings are brought against him. *In re Nelson*, 112 WLR 1869 (Super. Ct. 1984).

Questions of fact and law concerning mental impairment. — The presence of an abnormal mental condition, and the extent to which it impairs mental or emotional processes and controls, are questions of fact; how substantial such an impairment must be to be considered a mental illness is a matter of law. *Dixon v. Jacobs*, 427 F.2d 589 (D.C. Cir. 1970), overruled on other grounds, *United States v. Ecker*, 543 F.2d 178 (D.C. Cir. 1976).

Distinction between mentally responsible and mentally irresponsible lawbreakers. — The policies underlying the distinction in treatment between mentally responsible lawbreakers, who are sent to prison, and mentally irresponsible lawbreakers, who are sent to hospitals, are that it is both wrong and foolish to punish where there is no blame and where punishment cannot correct, and that the community's security may be better protected by hospitalization than by imprisonment. *Williams v. United States*, 250 F.2d 19 (D.C. Cir. 1957).

Sane person cannot be confined in mental hospital simply because he is considered potentially dangerous if released, and his dangerous tendencies must be attributable to an abnormal mental condition if he is to be retained in confinement. *Starr v. United States*, 264 F.2d 377 (D.C. Cir. 1958), cert. denied, 359 U.S. 936, 79 S. Ct. 652, 3 L. Ed. 2d 639 (1959).

Only those who are in need and may be dangerous may be confined to hospital for mentally ill. *Lynch v. Overholser*, 369 U.S. 705, 82 S. Ct. 1063, 8 L. Ed. 2d 211 (1962), superseded in part by statute, *United States v. Mendelsohn*, App. D.C., 443 A.2d 1311 (1982).

Commitment does not automatically render person incompetent for most purposes. *Cameron v. Mullen*, 387 F.2d 193 (D.C. Cir. 1967).

Responsibility for reaching just and appropriate approach to case. — The bench and bar are responsible for endeavoring to reach at the earliest possible stage in proceedings, ideally prior to trial and sentence, the approach to a particular case which appears to

be most just and appropriate, having regard to the individual's mental condition, his history, and the possibility of rehabilitating him and restoring him to usefulness in the community. *Overholser v. Lynch*, 288 F.2d 388 (D.C. Cir. 1961), rev'd on other grounds, 369 U.S. 705, 82 S. Ct. 1063, 8 L. Ed. 2d 211 (1962) (decided prior to 1970 amendments).

Right to treatment. — One involuntarily committed to a mental hospital on being acquitted of an offense by reason of insanity has a right to treatment. *Rouse v. Cameron*, 373 F.2d 451 (D.C. Cir. 1966).

On the issue of right to treatment, efforts should be made to provide treatment which is adequate in light of present knowledge. *Rouse v. Cameron*, 373 F.2d 451 (D.C. Cir. 1966).

Treatment in least restrictive alternative. — Subsection (a) of this section reflects the legislative judgment that, for an abbreviated length of time, the hospital environment is the least restrictive setting in which a medical judgment and recommendation as to the likelihood of the accused's regaining competency can be reached. *Farrell v. United States*, App. D.C., 646 A.2d 963 (1994).

One who is committed to a mental hospital upon a hearing following acquittal by reason of insanity is entitled not only to treatment but to treatment in the least restrictive alternative consistent with the legitimate purposes of the commitment. *Ashe v. Robinson*, 450 F.2d 681 (D.C. Cir. 1971).

Treatment does not include conditional release without judicial review. — The right of a mental hospital patient, who had been acquitted of criminal charges because of his insanity, to receive treatment under least restrictive conditions possible does not entitle him to obtain conditional release upon recommendation of the hospital without judicial review. *United States v. Ecker*, 543 F.2d 178 (D.C. Cir. 1976), cert. denied, 429 U.S. 1063, 97 S. Ct. 788, 50 L. Ed. 2d 779 (1977).

Duty to warn when dangerous patient escapes. — See *White v. United States*, 780 F.2d 97 (D.C. Cir. 1986).

Patient in mental hospital has right to independent psychiatric assistance where psychiatric inquiry undertaken by the state may be slanted to the state's interest and patient should be afforded such assistance in suitable cases even though no such risk appears. *Green v. United States*, 349 F.2d 203 (D.C. Cir. 1965).

Defendant is not entitled to presence of counsel and psychiatrist at mental examination staff conference despite contention that their presence is required to protect defendant's constitutional rights against self-incrimination and to counsel. *United States v. Fletcher*, 329 F. Supp. 160 (D.D.C. 1971).

Federal Escape Act. — A defendant's escape from mental hospital to which he was committed following an insanity acquittal did not constitute an escape from custody pursuant to a lawful arrest and did not violate the Federal Escape Act (18 U.S.C. §§ 751, 752, 1072). *United States v. Powell*, 503 F.2d 195 (D.C. Cir. 1974).

Extradition. — If the government is able to convince the fact-finder by clear and convincing evidence of the identity, fugitivity, and charge of criminality in a demanding state by extrinsic evidence, and if the requisition papers are in order, thus negating the limited defenses to extradition, determination of the arrestee's mental competence is irrelevant; however, if the government does not meet this burden, determination of the arrestee's competence to assist counsel in his or her defense is necessary, and further examination may be warranted. *United States v. Hardy*, 121 WLR 621 (Super. Ct. 1993).

Due process not violated by denial of examination at extradition hearing. — Defendant's Fifth Amendment due process rights were not violated by the denial of his request at his extradition hearing for an immediate psychiatric examination since it was not clear that the government's misstatement allegedly resulting in the denial was an intentional device to gain a tactical advantage, and in any event the defendant was not substantially prejudiced because he received a psychiatric examination shortly after he was transferred to the Maryland authorities pursuant to the extradition order and the results were available to him in his District of Columbia trial. *Shreeves v. United States*, App. D.C., 395 A.2d 774 (1978), cert. denied, 441 U.S. 943, 99 S. Ct. 2161, 60 L. Ed. 2d 1045 (1979), overruled on other grounds, *Dew v. United States*, 558 A.2d 1112 (D.C. 1989).

Cited in *Gonzales v. United States*, 40 App. D.C. 450 (1913); *Savage v. White*, 14 F.2d 352 (D.C. Cir. 1926); *Jackson v. United States*, 25 F.2d 549 (D.C. Cir. 1928); *Barry v. White*, 64 F.2d 707 (D.C. Cir. 1933); *Wheeler v. United States*, 165 F.2d 225 (D.C. Cir. 1947), cert. denied, 333 U.S. 829, 68 S. Ct. 448, 92 L. Ed. 1115 (1948); *Jordan v. United States*, 207 F.2d 28 (D.C. Cir. 1953); *Silverstein v. United States*, 210 F.2d 19 (D.C. Cir. 1953); *Watson v. United States*, 234 F.2d 42 (D.C. Cir. 1956); *Satterwhite v. United States*, 267 F.2d 675 (D.C. Cir. 1959); *United States v. Amburgey*, 189 F. Supp. 687 (D.D.C. 1960); *Stewart v. United States*, 366 U.S. 1, 81 S. Ct. 941, 6 L. Ed. 2d 84 (1961); *Jenkins v. United States*, 307 F.2d 637 (D.C. Cir. 1962); *Durham v. United States*, 308 F.2d 332 (D.C. Cir. 1962); *Leach v. United States*, 334 F.2d 945 (D.C. Cir. 1964); *Marshall v. United States*, 337 F.2d 119 (D.C. Cir. 1964); *Mullen v. Cameron*, 255 F. Supp. 326 (D.D.C.

1966), aff'd, 387 F.2d 193 (D.C. Cir. 1967); *Solomon v. Cameron*, 377 F.2d 170 (D.C. Cir. 1967); *Wesley v. United States*, App. D.C., 233 A.2d 514 (1967); *Proctor v. Harris*, 413 F.2d 383 (D.C. Cir. 1969); *Adams v. United States*, 413 F.2d 411 (D.C. Cir. 1969); *United States v. McNeil*, 434 F.2d 502 (D.C. Cir. 1970); *Jones v. Robinson*, 440 F.2d 249 (D.C. Cir. 1971); *Justin v. Jacobs*, 449 F.2d 1017 (D.C. Cir. 1971); *United States v. Simms*, 463 F.2d 1273 (D.C. Cir. 1972); *Hicks v. United States*, 357 F. Supp. 434 (D.D.C. 1973), aff'd, 511 F.2d 407 (D.C. Cir. 1975); *Johnson v. Robinson*, 509 F.2d 395 (D.C. Cir. 1974); *Davis v. United States*, App. D.C., 315 A.2d 157 (1974); *United States v. Carter*, 415 F. Supp. 15 (D.D.C. 1975); *United States v. Snyder*, 529 F.2d 871 (D.C. Cir. 1976); *United States v. Robertson*, 529 F.2d 879 (D.C. Cir. 1976); *Harman v. United States*, App. D.C., 351 A.2d 504, cert. denied, 429 U.S. 841, 97 S. Ct. 116, 50 L. Ed. 2d 110 (1976); *Clyburn v. United States*, App. D.C., 381 A.2d 260 (1977), cert. denied, 435 U.S. 999, 98 S. Ct. 1656, 56 L. Ed. 2d 90 (1978); *In re C.W.M.*, App. D.C., 407 A.2d 617 (1979); *Teasley v. United States*, 662 F.2d 787 (D.C. Cir. 1980); *United States v. Whitlock*, 663 F.2d 1094 (D.C. Cir. 1980); *Bowman v. United States*, App. D.C., 412 A.2d 10 (1980); *Carradine v. United States*, App. D.C., 420 A.2d 1385 (1980); *United States v. Hinckley*, 525 F. Supp. 1342 (D.D.C. 1981), supplement opinion, 529 F. Supp. 520 (D.D.C.), aff'd, 672 F.2d 115 (D.C. Cir. 1982); *United States v. Watts*, 532 F. Supp. 354 (D.D.C. 1981); *In re Mendoza*, App. D.C., 433 A.2d 1069 (1981); *United States v. Snyder*, 689 F.2d 1067 (D.C. Cir. 1982); *In re Hanna*, 111 WLR 497 (Super. Ct. 1983); *United States v. De Veau*, 111 WLR 2333 (Super. Ct. 1983); *In re Nelson*, 112 WLR 1869 (Super. Ct. 1984); *Holt v. United States*, App. D.C., 486 A.2d 705 (1985); *Clifford v. United States*, App. D.C., 532 A.2d 628 (1987); *Woodard v. United States*, App. D.C., 551 A.2d 826 (1988); *Thomas v. Saint Elizabeth's Hosp.*, 720 F. Supp. 14 (D.D.C. 1989), aff'd, 919 F.2d 182 (D.C. Cir. 1990); *Jackson v. United States*, App. D.C., 557 A.2d 164 (1989); *In re Melton*, App. D.C., 597 A.2d 892 (1991); *Jackson v. United States*, App. D.C., 641 A.2d 454 (1994).

II. COMPETENCY TO STAND TRIAL.

Protection of Fifth Amendment does not extend to sanity determination, for the government's use of the defendant's statement obtained in a court-ordered psychiatric examination is not incriminating within the meaning of the Fifth Amendment when used solely for the purpose of rebutting the defendant's insanity claim. *White v. United States*, App. D.C., 451 A.2d 848 (1982).

When a defendant raises the defense of insanity, he may constitutionally be subjected to

compulsory examination by court-appointed or government psychiatrists without the necessity of recording; and when he introduces into evidence psychiatric testimony to support his insanity defense, testimony of those examining psychiatrists may be received on that issue as well without violating his Fifth Amendment right against self-incrimination. *United States v. Byers*, 740 F.2d 1104 (D.C. Cir. 1984).

The government's interest in maintaining a pretrial detainee in a competent condition to stand trial was a "legitimate incident of institutionalization" to which the defendant's interest must yield, permitting the involuntary administration of psychotropic drugs to restore or maintain a defendant's competency for trial. *Tran Van Khiem v. United States*, App. D.C., 612 A.2d 160 (1992), cert. denied, 507 U.S. 924, 113 S. Ct. 1293, 122 L. Ed. 2d 684 (1993).

Where it was impossible for several years to bring a criminal defendant to trial to determine his guilt or innocence without first administering psychotropic medication, the government's interest was a "fundamental" one and of a very high order. *Tran Van Khiem v. United States*, App. D.C., 612 A.2d 160 (1992), cert. denied, 507 U.S. 924, 113 S. Ct. 1293, 122 L. Ed. 2d 684 (1993).

The right to accept or reject medical treatment is not absolute. A mentally ill individual who has been sentenced to imprisonment retains a right, both under state law and under the Due Process Clause of the Fourteenth Amendment, to be free from the arbitrary administration of antipsychotic medication, and the government cannot intrude upon the bodily integrity of a defendant committed pursuant to this section without a showing of overriding justification and medical appropriateness; once such a showing has been made, however, the defendant enjoys common-law or due process protection only from an unreasonable or arbitrary determination that involuntary medication is appropriate. *Tran Van Khiem v. United States*, App. D.C., 612 A.2d 160 (1992), cert. denied, 507 U.S. 924, 113 S. Ct. 1293, 122 L. Ed. 2d 684 (1993).

A defendant having been lawfully committed to the hospital, the extent of his rights must be assessed in the context of his confinement. A criminal defendant is committed to a mental hospital for "care and treatment" in order to enable him to regain his competency; it would surely be incongruous, in light of this section, to hold that the court, after committing an accused for treatment to render him competent so that he can stand trial for the offenses with which he has been charged, is obliged to withhold treatment at the accused's sole option. *Tran Van Khiem v. United States*, App. D.C., 612 A.2d 160 (1992), cert. denied, 507 U.S. 924, 113 S. Ct. 1293, 122 L. Ed. 2d 684 (1993).

Purposes of inquiry into competency. —

The purpose of inquiry into accused's competency is to prevent the infliction of punishment upon a person so lacking in mental capacity as to be unable to understand the nature and purpose of the punishment. *Neely v. United States*, 150 F.2d 977 (D.C. Cir.), cert. denied, 326 U.S. 768, 66 S. Ct. 166, 90 L. Ed. 463 (1945).

The purpose of providing for a mental examination of an accused before trial is to determine whether he is capable of understanding the nature and object of the proceedings so as to properly conduct his defense at a trial of the charge against him. *Evans v. United States*, App. D.C., 83 A.2d 876 (1951).

The purpose of pretrial commitment of accused is to determine whether an accused can understand the proceedings against him and properly assist in his defense and, in the event he cannot, to provide for his confinement in a hospital instead of a jail until he can. *Williams v. Overholser*, 259 F.2d 175 (D.C. Cir. 1958).

The purpose of ordering a mental examination for a defendant is to get evidence on whether he is or is not competent to stand trial, and to get evidence on whether, if there is a trial, the jury should be instructed on insanity and criminal responsibility. *Mitchell v. United States*, 316 F.2d 354 (D.C. Cir. 1963).

Competency to stand trial depends on whether defendant understands nature of proceedings against him and is properly able to assist in his own defense. *United States v. Womack*, 211 F. Supp. 578 (D.D.C. 1962).

To be competent to stand trial, defendant's memory and intellectual abilities must not be substantially impaired by mental disorder. *Hansford v. United States*, 365 F.2d 920 (D.C. Cir. 1966).

The conceptual range of the expression "legally incompetent" only embraces deficiencies in accused which actually prevent his fair trial, and a mere deficiency, standing alone, is outside the limits of this concept. *United States v. Wilson*, 263 F. Supp. 528 (D.D.C. 1966), modified, 391 F.2d 460 (D.C. Cir. 1968).

Procedure for determining the mental competency of a juvenile. — The determination of mental competency of a juvenile is one of those instances where the procedure followed in adult criminal prosecutions must be applied to juvenile delinquency proceedings. The right not to be tried or convicted while incompetent is a fundamental right of a juvenile in juvenile delinquency proceedings. In *re W.A.F.*, App. D.C., 573 A.2d 1264 (1990).

Due process rights under (c)(1). — Since the right not to be tried while incompetent is a due process right, the competency standard established in *Dusky v. United States*, 362 U.S. 402, 80 S. Ct. 788, 4 L. Ed. 2d 824 (1960) is applicable to juvenile delinquency proceedings

unless the juvenile system adequately protects that right, and the incompetency standard in § 16-2315(c)(1), together with other procedures in the juvenile system, does not do so. In re W.A.F., App. D.C., 573 A.2d 1264 (1990).

Inquiry focused on present mental condition. — For purposes of determining one's competence to stand trial, that is, whether he is able to understand proceedings against him or properly assist in his defense, inquiry is focused on present mental condition, namely, at time of trial. Bolton v. Harris, 395 F.2d 642 (D.C. Cir. 1968).

Commitment of incompetent accused not unconstitutional. — The commitment of an accused found incompetent to stand trial to a mental hospital is not unconstitutional for absence of provision for jury trial since all that is required is due process which is satisfied by judicial hearing which is provided for. Williams v. Overholser, 162 F. Supp. 514 (D.D.C.), modified on other grounds, 259 F.2d 175 (D.C. Cir. 1958).

Competency inquiry not a criminal proceeding. — An inquiry held before trial to determine if accused is capable of going to trial is not a criminal proceeding and does not fall within ambit of the 6th Amendment. Evans v. United States, App. D.C., 83 A.2d 876 (1951).

This section makes ample provision for inquiry conducted with due regard to protection of the defendant. Wagner v. White, 38 App. D.C. 554 (1912).

Jurisdiction to determine competency. — The only court that may determine the mental competency of an accused to stand trial is the court having jurisdiction of such charge. Williams v. Overholser, 162 F. Supp. 514 (D.D.C.), modified on other grounds, 259 F.2d 175 (D.C. Cir. 1958).

Committing magistrate does not have power to find that person charged with felony is mentally incompetent to stand trial and thereby preclude action on that important question by district court for the District of Columbia. Mance v. Cameron, 260 F. Supp. 851 (D.D.C. 1966).

Defendant has no Sixth Amendment right to presence of counsel at a pretrial psychiatric examination. White v. United States, App. D.C., 451 A.2d 848 (1982).

A criminal defendant's Sixth Amendment rights were not violated by failure to permit his attorney to attend psychiatric staff conferences leading to an evaluation for subsequent introduction at trial of his mental state at the time of the crime. United States v. Byers, 740 F.2d 1104 (D.C. Cir. 1984).

Pretrial examination may be for dual purpose of determining competency to stand trial and sanity at the time of the offense as long as the defendant, through his counsel, is

informed of both purposes. White v. United States, App. D.C., 451 A.2d 848 (1982).

Determination of defendant's competency to stand trial must be that of trial judge. United States v. David, 511 F.2d 355 (D.C. Cir. 1975).

Competency determinations are within the discretion of the trial judge and are entitled to great deference. Bennett v. United States, App. D.C., 400 A.2d 322 (1979).

Judicial determination of competency must be an informed one. Blunt v. United States, 389 F.2d 545 (D.C. Cir. 1967).

Subsection (a) places no time limit on confinement for examination and observation. Thomas v. United States, App. D.C., 418 A.2d 122 (1980).

Pretrial commitment pursuant to subsection (a) for mental examination is not ground for denial of bail otherwise contemplated by Bail Reform Act. Marcey v. Harris, 400 F.2d 772 (D.C. Cir. 1968).

Commitment for observation may be ordered for determination of questions other than competency to understand proceedings. Leach v. United States, 353 F.2d 451 (D.C. Cir. 1965), cert. denied, 383 U.S. 917, 86 S. Ct. 911, 15 L. Ed. 2d 672 (1966).

Evidence on motion for mental examination. — On a motion for an order directing a mental examination, the defendant is not required to produce, in order to get the examination, enough evidence to prove that he is incompetent or irresponsible. Mitchell v. United States, 316 F.2d 354 (D.C. Cir. 1963).

Prosecutor's obligation regarding pretrial mental examination. — A prosecutor who knows that the accused's mental state at the time of the crime will be the critical issue at trial has an obligation to see that any pretrial mental examination of the accused that may be ordered be broad enough to cast light on that issue, and such course is required not only to protect the rights of the accused, but also to protect society's interest in hospitalizing the accused, if his violent acts sprang from mental disorder, so that he will not be released, as he would be after completion of a prison sentence, without medical assurance that he is not likely to be dangerous to himself or others in the reasonably foreseeable future. Winn v. United States, 270 F.2d 326 (D.C. Cir. 1959), cert. denied, 365 U.S. 848, 81 S. Ct. 810, 5 L. Ed. 2d 812 (1961).

Competency examination extended to issue of mental responsibility. — A mental hospital's examination of a defendant properly extended to issue of mental responsibility even though, in terms of subsection (a) of this section and the order for the examination referred only to competency to stand trial. United States v. Ashe, 427 F.2d 626 (D.C. Cir. 1970).

Section 4244 of Title 18 of United States Code is applicable to mental examinations ordered by District of Columbia courts when it appears that an accused is of unsound mind or mentally incompetent to understand the proceedings against him. *Battle v. Cameron*, 260 F. Supp. 804 (D.D.C. 1966).

Section 4244 of Title 18 of the United States Code permits a statement of the accused to be admitted into evidence only on issue of sanity, and not on the issue of whether or not the defendant committed the acts charged. *United States v. Bennett*, 460 F.2d 872 (D.C. Cir. 1972).

There must be facts which create substantial doubt of defendant's mental competence before due process requires trial judge to order hearing thereon sua sponte. *Powell v. United States*, 373 F.2d 225 (D.C. Cir. 1966).

If accused denies that he is mentally ill, he is entitled to judicial determination of his mental state despite hospital board's certification that he is of unsound mind. *Lynch v. Overholser*, 369 U.S. 705, 82 S. Ct. 1063, 8 L. Ed. 2d 211 (1962), but see *United States v. Mendelsohn*, App. D.C., 443 A.2d 1311 (1982).

Competency hearing must be of record and both parties must be given opportunity to examine all witnesses who testify or report on accused's competence. *Blunt v. United States*, 389 F.2d 545 (D.C. Cir. 1967).

Right to counsel. — Where a person charged with a criminal offense was subjected to a competency inquiry prior to trial, due process required that defendant be represented by counsel in spite of ostensible waiver of that right or privilege. *Evans v. United States*, App. D.C., 83 A.2d 876 (1951).

Hearing must be on issue of defendant's competency to stand trial, and nothing more. *Williams v. District of Columbia*, App. D.C., 147 A.2d 773 (1959).

Under subsection (a), the court is empowered to hold a hearing only to determine competency. *Cameron v. Mullen*, 387 F.2d 193 (D.C. Cir. 1967).

Careful evaluation of accused's condition is required of court during competency hearing. *Blunt v. United States*, 389 F.2d 545 (D.C. Cir. 1967).

Use of evidence from previous sanity hearing. — A trial judge, in determining issue of defendant's competency to stand trial, could not use evidence introduced in a previous hearing as to defendant's sanity where that previous hearing entered plea of guilty on same charge. *Williams v. District of Columbia*, App. D.C., 147 A.2d 773 (1959).

Finding of competency will not be set aside upon review unless it is "clearly arbitrary or erroneous." *Bennett v. United States*, App. D.C., 400 A.2d 322 (1979).

Adjudication of competence based upon certification of psychiatrist. — If neither party objects, the court, without holding a hearing, may enter an order adjudicating the defendant to be competent based upon the certification of the examining psychiatrist. *Bennett v. United States*, App. D.C., 400 A.2d 322 (1979).

Hospital report that defendant was mentally competent to stand trial was not binding on court. *Wider v. United States*, 348 F.2d 358 (D.C. Cir. 1965).

Letter from hospital superintendent stating conclusion that accused was considered competent to stand trial, without supporting information and reasons, would not come within meaning of terms "report" or "certificate" as used in this section. *Holloway v. United States*, 343 F.2d 265 (D.C. Cir. 1964).

Psychiatrist's evaluation of defendant's mental condition. — A psychiatrist's reports on whether a defendant was mentally competent to stand trial properly included evaluation of defendant's mental condition at time crimes were committed. *Overholser v. Lynch*, 288 F.2d 388 (D.C. Cir. 1961), rev'd on other grounds, 369 U.S. 705, 82 S. Ct. 1063, 8 L. Ed. 2d 211 (1962).

Function of psychiatric expert under subsection (a). — An examination under subsection (a) provides the court with the judgment of a neutral and detached expert, and while his opinion may be utilized by the defendant, the expert is not always available to advise and assist in the development of an insanity defense. *Gaither v. United States*, App. D.C., 391 A.2d 1364 (1978).

The task of an expert under subsection (a) of this section essentially is to provide the court, in a neutral and detached manner, with an evaluation of the accused's competency to stand trial or of defendant's sanity at the time of the commission of the offense. *Dobson v. United States*, App. D.C., 426 A.2d 361 (1981).

Different from that of experts furnished under § 11-2605(a). — Subsection (a) providing for a mental examination pursuant to court order must be distinguished from § 11-2605(a), which authorizes the furnishing of psychiatric experts to indigent criminal defendants. *Gaither v. United States*, App. D.C., 391 A.2d 1364 (1978).

The § 11-2605(a) expert acts as a consultant to the defendant, not to the court. His main purpose is to help determine whether there is a reasonable basis for an insanity defense. *Dobson v. United States*, App. D.C., 426 A.2d 361 (1981).

Lack of general medical background may affect weight given to psychologist's testimony in incompetency hearing. *Blunt v. United States*, 389 F.2d 545 (D.C. Cir. 1967).

Defendant's statements during examination not to be used in determination of

punishment. — Absent appropriate warnings prior to a court-ordered psychiatric examination, no testimony based on the defendant's statement at that examination can be used in the determination of a defendant's punishment. *White v. United States*, App. D.C., 451 A.2d 848 (1982).

Physician-patient privilege of § 14-307 does not apply to sanity determination pursuant to subsection (a) of this section or Rule 12.2 of the Superior Court Rules of Criminal Procedure. *White v. United States*, App. D.C., 451 A.2d 848 (1982).

Effect of determination of incompetency. — Where an accused was found to be of unsound mind and was committed to a hospital, the determination of insanity spoke as of the date thereof and was a legal determination that accused was not then mentally qualified to stand trial. *Haislip v. United States*, 129 F.2d 53 (D.C. Cir. 1942); *Evans v. United States*, App. D.C., 83 A.2d 876 (1951).

Duration of commitment because of incapacity to stand trial. — A defendant who has been committed solely because of mental incapacity to proceed to trial cannot be held more than a reasonable period of time to determine whether there is substantial probability that he will attain capacity in foreseeable future; if it appears that he will not be mentally competent to stand trial in foreseeable future, the government must either institute civil commitment proceedings or release him. *United States v. Lancaster*, 408 F. Supp. 225 (D.D.C. 1976); *Tran Van Khiem v. United States*, App. D.C., 612 A.2d 160 (1992), cert. denied, 507 U.S. 924, 113 S. Ct. 1293, 122 L. Ed. 2d 684 (1993).

If a defendant is found unlikely to regain his competence in the foreseeable future, under *Jackson v. Indiana*, 406 U.S. 715, 92 S. Ct. 1845, 32 L. Ed. 2d 435 (1972), the government must either pursue civil commitment procedures within 30 days of such finding or the accused must be released. *Thomas v. United States*, App. D.C., 418 A.2d 122 (1980).

Whenever court receives certification of incompetency or certification of restoration of competency and there is no objection by either the accused or the government, court may, in former case, forthwith commit the accused to a mental hospital and, in the latter case, immediately proceed with trial. *Whalem v. United States*, 346 F.2d 812 (D.C. Cir.), cert. denied, 382 U.S. 862, 86 S. Ct. 124, 15 L. Ed. 2d 100 (1965), overruled on other grounds, *United States v. Marble*, 940 F.2d 1543 (D.C. Cir. 1991).

Proceeding to trial without competency determination. — Where the 2 hospitals to which the accused was referred for mental examination certified him as competent to stand trial, in absence of objection either from the accused or the government, the court could, in its discretion, proceed with trial without

holding a hearing to determine competence. *Whalem v. United States*, 346 F.2d 812 (D.C. Cir.), cert. denied, 382 U.S. 862, 86 S. Ct. 124, 15 L. Ed. 2d 100 (1965), overruled on other grounds, *United States v. Marble*, 940 F.2d 1543 (D.C. Cir. 1991).

A defendant's sentences were not void because of absence of adjudication that defendant was competent to stand trial, though he had previously been found to be insane, where the certificate of the superintendent of a hospital stating that the defendant had recovered his reason and was then of sound mind was filed in the court before defendant pleaded guilty, and court ordered examination by 2 independent psychiatrists who reported that defendant was of sound mind at the time. *Hunter v. United States*, 323 F.2d 625 (D.C. Cir. 1963), cert. denied, 380 U.S. 918, 85 S. Ct. 912, 13 L. Ed. 2d 803 (1965).

The decision of trial judge to proceed with trial on the merits without ordering a commitment of defendant for competency observation was not abuse of discretion in absence of any objection or motion from defense counsel and in view of simultaneous expression of willingness to try, through bifurcation, any insanity defense that might subsequently appear appropriate. *United States v. Bradley*, 463 F.2d 808 (D.C. Cir. 1972).

Full and scrupulous attention must be given to any evidence concerning competency at trial, whether or not there has been a competency hearing. *Blunt v. United States*, 389 F.2d 545 (D.C. Cir. 1967).

Commitment without judicial determination of competency to stand trial. — Where the trial court found an accused to be of unsound mind and committed him to mental hospital, but made no judicial determination on competency to stand trial, such failure constituted an illegal detention cognizable under writ of habeas corpus since such failure resulted in denial of a right given him by statute as well as his right, if competent, to speedy trial under the Constitution. *Williams v. Overholser*, 162 F. Supp. 514 (D.D.C.), modified on other grounds, 259 F.2d 175 (D.C. Cir. 1958).

Cure for inadequate determination of competency. — An inadequate determination by court of question whether defendant is mentally competent to stand trial is not curable by nunc pro tunc hearing, and defendant is entitled to new trial. *Wider v. United States*, 348 F.2d 358 (D.C. Cir. 1965).

Affidavit sufficient to require granting of motion for mental examination. — Defense counsel's affidavit in support of motion for pretrial mental examination, reciting that counsel had serious doubts as to the defendant's mental capacity to assist him intelligently and as to his mental health, believing that the crime may have resulted from dis-

torted mind based on unspecified personal observations, oddities in the defendant's behavior and beliefs and the fact that the defendant had relatives who were afflicted with a mental disorder, raised sufficient possibility that the crimes were product of mental disease or defect to require granting of motion. *Cannady v. United States*, 351 F.2d 817 (D.C. Cir. 1965).

Motion for mental examination made on day trial is to begin. — Although a trial judge has some discretion in denying a motion for a mental examination as not timely, if counsel learns of defendant's alleged symptoms on day the trial is scheduled to begin, a motion submitted at that time cannot be denied as late. *Mitchell v. United States*, 316 F.2d 354 (D.C. Cir. 1963).

Consideration of nature of crime in decision to order mental examination. — The nature of the crime of sodomy, with which the accused was charged, was not sufficient alone to require the District Court, before accepting his guilty plea, to order a mental examination of the accused, although the court could properly consider the nature of crime in that connection. *Carter v. United States*, 283 F.2d 200 (D.C. Cir. 1960).

Competency examination of suspected addict. — When a trial court has reasonable grounds to suspect a criminal defendant of being an addict, trial court should exercise its discretion and order competency examination of defendant. *Grennett v. United States*, 403 F.2d 928 (D.C. Cir. 1968).

Denial of motion for mental examination of alleged drug addict. — Since the defendant, who allegedly had history of drug addiction, was opposed to pretrial motion for mental examination and, on interrogation by the court with questions designed to elicit the degree of his understanding of his legal circumstances as well as his position on the motion, his responses to former were clear and his opposition to commitment was steadfast, the trial court did not err in denying motion. *United States v. Collins*, 433 F.2d 550 (D.C. Cir. 1970).

Defendant's narcotic use during trial required new inquiry into competency. — Defendant's testimony wherein he admitted that he had been using narcotics throughout the trial and even during lunch recess that very day and testimony of court-appointed psychiatrist that defendant's use of narcotics had previously produced acute brain syndrome, a mental disorder, raised substantial doubt as to his competency, and therefore imposed on trial court, which had initially found defendant competent to stand trial, a duty to inquire anew into competency. *Hansford v. United States*, 365 F.2d 920 (D.C. Cir. 1966).

Raising competency issue after entry of guilty plea. — After entry of plea of guilty,

petitioner could demand no more than nunc pro tunc hearing on issue of competency. *Mordecai v. United States*, 252 F. Supp. 694 (D.D.C. 1966).

Amnesia does not constitute incompetency. — Amnesia, in a case where recollection was present during the time of the alleged offenses and where the defendant could construct a knowledge of what happened from other sources, and where he has present ability to follow course of proceedings against him and discuss them rationally with his attorney, does not constitute incompetency per se. *United States v. Wilson*, 263 F. Supp. 528 (D.D.C. 1966), modified, 391 F.2d 460 (D.C. Cir. 1968).

Nor do suicide attempts. — Suicide attempts do not establish that an accused is no longer sufficiently cognizant of his role in a trial or that he is unable to satisfactorily perform it. *United States v. Caldwell*, 543 F.2d 1333 (D.C. Cir. 1974), cert. denied, 423 U.S. 1087, 96 S. Ct. 877, 47 L. Ed. 2d 97 (1976).

Where finding of competency had been based on hearing held almost 30 months before it was determined that there had not been a properly informed judicial determination, a new trial rather than remand for nunc pro tunc proceedings was required. *Blunt v. United States*, 389 F.2d 545 (D.C. Cir. 1967).

Credit against sentence for time spent hospitalized for examination. — A defendant, who pleaded guilty to an offense carrying mandatory minimum sentence and was in jail after arrest when he moved for mental examination, was entitled to credit against sentence for time spent in hospital pursuant to order for examination; credit was to be given administratively by Attorney General and not as exercise of sentencing court's discretion. *Sawyer v. Clark*, 386 F.2d 633 (D.C. Cir. 1967).

Competency hearing after acquittal. — Under subsection (a) of this section, the trial court had jurisdiction to conduct hearing to determine competency of defendant after his acquittal on grounds of insanity, despite his refusal to raise issue in criminal trial. *United States v. Limber*, App. D.C., 192 A.2d 530 (1963).

Failure to hold competency hearing held no abuse of discretion. — Where the court, after the defendant's conviction and prior to sentencing, requested and received a psychiatric report showing the defendant to be competent to engage in the pending proceedings, to which report the defendant did not object, failure to hold hearing on defendant's competency was not an abuse of discretion. *Hughes v. United States*, App. D.C., 308 A.2d 238 (1973).

The trial court did not abuse its discretion in failing to hold a competency hearing, in view of facts that defendant objected to such hearing, that psychiatric reports concluded that defendant was competent to stand trial, and that

defense counsel alone thought that hearing was required. *Lopez v. United States*, App. D.C., 373 A.2d 882 (1977).

Jurisdiction to commit after acquittal and erroneous commitment. — The trial court did not have jurisdiction under subsection (a) of this section to commit a person to a mental hospital where court had found accused not guilty by reason of insanity but had finally disposed of the criminal charges against him more than a year before such commitment and had erroneously committed the accused under subsection (d) of this section. *Cameron v. Fisher*, 320 F.2d 731 (D.C. Cir. 1963).

Review of denial of request for competency examination limited. — When defendant has sought and been denied a competency examination, Court of Appeals' review is limited to determining whether the trial court abused its discretion in so ruling. *Thorne v. United States*, App. D.C., 471 A.2d 247 (1983).

III. ACQUITTAL BY REASON OF INSANITY.

Provision requiring mandatory confinement of persons found not guilty by reason of insanity is constitutional. *Foller v. Overholser*, 292 F.2d 732 (D.C. Cir. 1961).

Mandatory commitment provision does not deprive one committed thereby of liberty without due process of law, as there is a rational connection between known evidence of the person's mental disease and mandatory commitment provision, and as statute authorizes one so confined to test legality of confinement by habeas corpus proceeding which provides de novo hearing to examine into mental condition. *Ragsdale v. Overholser*, 281 F.2d 943 (D.C. Cir. 1960), modified on other grounds, *Bolton v. Harris*, 395 F.2d 642 (D.C. Cir. 1968), (decided prior to 1970 amendments).

Mandatory commitment not cruel and unusual punishment. — In view of fact that defendant, who was indefinitely committed to mental hospital after he was acquitted by reason of insanity and might never improve sufficiently to obtain unconditional release, had not been denied any right to treatment, commitment does not constitute cruel and unusual punishment in violation of the 8th amendment. *United States v. Jackson*, 553 F.2d 109 (D.C. Cir. 1976).

Nor a denial of equal protection. — In view of fact that acquittal by reason of insanity requires proof by a preponderance of the evidence not only of mental defect but also of a causal connection between the defect and the defendant's lack of behavior control, rational basis exists for treating criminal defendants who are acquitted by reason of insanity differently from civilly committed mentally ill persons and, therefore, the classification does not

deprive such mentally retarded individuals of equal protection of the laws. *United States v. Jackson*, 553 F.2d 109 (D.C. Cir. 1976).

Purpose of mandatory commitment of defendant found not guilty on ground of insanity, and placing certain safeguards against release of such person from mental hospital after his commitment thereto, is to protect the public and discourage unfounded pleas of insanity and statute must be construed in a manner to best effectuate those objectives. *In re Rosenfield*, 157 F. Supp. 18 (D.D.C. 1957).

The purpose of involuntary hospitalization is treatment, not punishment. *Rouse v. Cameron*, 373 F.2d 451 (D.C. Cir. 1966).

The underlying policy of statute government commitment and release of persons found not guilty of crime by reason of insanity is to provide treatment and cure for individual in manner which affords reasonable assurance of public safety. *United States v. Charnizon*, App. D.C., 232 A.2d 586 (1967); *Jones v. United States*, App. D.C., 432 A.2d 364 (1981), *aff'd*, 463 U.S. 354, 103 S. Ct. 3043, 77 L. Ed. 2d 694 (1983).

The purpose of detention of person acquitted of crime by reason of insanity is not punitive but serves to protect the public and the subject and to afford place and procedure to treat and, if possible, to rehabilitate the subject. *Collins v. Cameron*, 377 F.2d 945 (D.C. Cir. 1967).

Purpose of statute providing for mandatory commitment of person acquitted on ground that he was insane at time of commission of offense and prescribing release standards was to achieve balance of interest between public and person charged with crime by insuring that in every case where person committed crime as result of mental disease or defect, such person should be given period of hospitalization to guard against imminent recurrence of some criminal act. *Bolton v. Harris*, 395 F.2d 642 (D.C. Cir. 1968), superseded in part by statute, *United States v. Cohen*, 733 F.2d 128 (D.C. Cir.), *DeVeau v. United States* (D.C. App.) 483 A.2d 307 (1984).

The intent underlying the requirement for indefinite commitment of any person who is acquitted of an offense solely on the ground of insanity is to insure that such persons are automatically committed for the protection of the public and their own protection and rehabilitation. *United States v. Jackson*, 553 F.2d 109 (D.C. Cir. 1976).

The statutory scheme for commitment of insane criminals is a regulatory, prophylactic statute, based on a legitimate governmental interest in protecting society and rehabilitating mental patients. It is not rendered penal by the fact that it is predicated on the commission of a crime; evidence of crime is only one of the elements triggering commitment, the other element being proof of insanity by a preponder-

ance of the evidence. *Jones v. United States*, App. D.C., 432 A.2d 364 (1981), *aff'd*, 463 U.S. 354, 103 S. Ct. 3043, 77 L. Ed. 2d 694 (1983).

The purpose of commitment following an insanity acquittal, like that of civil commitment, is to treat the individual's mental illness and protect him and society from his potential dangerousness; the committed acquittee is entitled to release when he has recovered his sanity or is no longer dangerous. *Jones v. United States*, 463 U.S. 354, 103 S. Ct. 3043, 77 L. Ed. 2d 694 (1983).

Commitment after verdict of not guilty by reason of insanity is not adjudication of insanity or incompetency. *Green v. United States*, 351 F.2d 198 (D.C. Cir. 1965).

Mandatory commitment provision is applicable only to defendant who affirmatively relies upon defense of insanity in any way and such defense need not be asserted by formal plea, but the statute does not apply to one who has maintained that he was mentally responsible when alleged offense was committed. *Lynch v. Overholser*, 369 U.S. 705, 82 S. Ct. 1063, 8 L. Ed. 2d 211 (1962), superseded in part by statute, *United States v. Mendelsohn*, App. D.C., 443 A.2d 1311 (1982).

In the event of the acquittal of an accused by reason of insanity following his affirmative refusal to rely on such ground as a defense, the automatic commitment procedures of subsection (d) of this section would not apply. *Whalem v. United States*, 346 F.2d 812 (D.C. Cir.), *cert. denied*, 382 U.S. 862, 86 S. Ct. 124, 15 L. Ed. 2d 100 (1965), overruled on other grounds, *United States v. Marble*, 940 F.2d 1543 (D.C. Cir. 1991); *Rouse v. Cameron*, 387 F.2d 241 (D.C. Cir. 1967).

Where petitioner had not himself sought introduction of insanity defense at his trial and had not acquiesced in assertion of that defense, his commitment to a hospital for the mentally ill following his acquittal by reason of insanity was not authorized. *Rouse v. Cameron*, 387 F.2d 241 (D.C. Cir. 1967).

Where the trial court raised the defense of insanity *sua sponte* and found the defendant not guilty by reason of insanity, the trial court was not entitled to automatically commit defendant; such commitment applied only in event the defendant himself raised the defense of insanity. *United States v. Wright*, 511 F.2d 1311 (D.C. Cir. 1975); *Freundak v. United States*, App. D.C., 408 A.2d 364 (1979).

The mandatory commitment provision of this section does not include persons acquitted by reason of insanity where there is neither objective nor subjective evidence that they chose to rely upon an insanity defense or were aware that such defense had been interposed by counsel. *United States v. Henry*, 600 F.2d 924 (D.C. Cir. 1979).

The procedures set forth in subsection (d) of

this section for commitment of insanity acquittees are designed to serve a dual purpose: First, treatment of the acquittee's mental illness and recovery of his sanity, and second, protection of the acquittee and society from his potential dangerousness. *Adams v. United States*, App. D.C., 502 A.2d 1011 (1986).

Prerequisite to commitment. — The prerequisite to defendant's commitment was a jury finding, beyond a reasonable doubt, that the defendant had committed a criminal offense. Such a finding triggers treatment of the judgment in a manner consistent with other criminal verdicts for purposes of double jeopardy and *ex post facto* protections. *United States v. Hinckley*, 725 F. Supp. 616 (D.D.C. 1989).

Court must sufficiently apprise defendant of conditions of release. — Where defendant entered a plea of not guilty by reason of insanity, he was entitled to be told that he would be eligible for release only if the court, after receiving the views of hospital authorities, found that he was no longer a danger to himself or others, and that if the court continued to consider him a danger to himself or others, he would remain confined indefinitely. A passing reference to a "short time or a long time" did not sufficiently apprise defendant of what was at stake. *Legrand v. United States*, App. D.C., 570 A.2d 786 (1990).

Confinement pursuant to subsection (d) is not punitive in nature. *Jones v. United States*, App. D.C., 432 A.2d 364 (1981), *aff'd*, 463 U.S. 354, 103 S. Ct. 3043, 77 L. Ed. 2d 694 (1983).

And committed acquittee is patient, not prisoner. — An individual committed to a mental hospital after acquittal of a crime by reason of insanity is a patient and not a prisoner. *Jones v. United States*, App. D.C., 432 A.2d 364 (1981), *aff'd*, 463 U.S. 354, 103 S. Ct. 3043, 77 L. Ed. 2d 694 (1983).

Purpose of judicial hearing requirement. — The requirement of a separate judicial hearing before indeterminate commitment was intended to undo the punitive aspects attending the formerly automatic connection between the determination of guilt and the commitment of a defendant who pleaded insanity. *Jones v. United States*, App. D.C., 432 A.2d 364 (1981), *aff'd*, 463 U.S. 354, 103 S. Ct. 3043, 77 L. Ed. 2d 694 (1983).

Inmate who elected plea of not guilty by reason of insanity could not complain of commitment to mental hospital pursuant to this section. *Curry v. Overholser*, 287 F.2d 137 (D.C. Cir. 1960).

Persons found not guilty by reason of insanity must be given judicial hearing with procedures substantially similar to those in civil commitment proceedings. *Bolton v. Harris*, 395 F.2d 642 (D.C. Cir. 1968), superseded in part by statute, *United States v. Cohen*, 733

F.2d 128, (D.C. Cir.), *DeVeau v. United States*, App. D.C., 483 A.2d 307 (1984).

Hearing requirement applied prospectively. — The rule that persons found not guilty by reason of insanity must be given judicial hearing with procedures substantially similar to those in civil commitment proceedings is applicable prospectively only. *Bolton v. Harris*, 395 F.2d 642 (D.C. Cir. 1968), superseded in part by statute, *United States v. Cohen*, 733 F.2d 128, (D.C. Cir.), *DeVeau v. United States*, App. D.C., 483 A.2d 307 (1984).

Defendant's burden of proof in hearing. — In hearing after the defendant has been found not guilty by reason of insanity, the defendant has burden of proving by preponderance of the evidence that he is not likely to injure himself or other persons due to mental illness if he is released from custody. *United States v. Brawner*, 471 F.2d 969 (D.C. Cir. 1972).

Defendant acquitted by reason of insanity could be committed on determination of mental illness by preponderance of evidence. *United States v. Brown*, 478 F.2d 606 (D.C. Cir. 1973).

There is justification for preponderance of proof standard for commitment of the insanity-acquitted even if higher standard is required prior to civil commitment and even though there is no justification for denying the insanity-acquitted the right to jury trial that is recognized for those involved in civil commitment proceedings. *United States v. Brown*, 478 F.2d 606 (D.C. Cir. 1973).

Finding of not guilty by reason of insanity is sufficient foundation for commitment of an insanity acquittee for the purposes of treatment and the protection of society. *Jones v. United States*, 463 U.S. 354, 103 S. Ct. 3043, 77 L. Ed. 2d 694 (1983).

And supports inference of continuing mental illness. — It was not unreasonable for Congress to determine that the insanity acquittal supports an inference of continuing mental illness. *Jones v. United States*, 463 U.S. 354, 103 S. Ct. 3043, 77 L. Ed. 2d 694 (1983).

Person who did not plead or rely on insanity defense, but who is nevertheless found not guilty by reason of insanity, has not conceded that he needs treatment; the cautionary, more deliberative process of civil commitment under subchapter IV of Chapter 5 of Title 21 should apply the summary commitment called for by this section. *Sanderlin v. United States*, 794 F.2d 727 (D.C. Cir. 1986).

Acquittee has no right to jury decision on commitment. — An insanity acquittee has no right to have a jury decide whether his condition meets the requirements for commitment under this section. *United States v. Henry*, 600 F.2d 924 (D.C. Cir. 1979).

Application of Hospitalization of Mentally Ill Act. — Where feasible, requirements of Hospitalization of Mentally Ill Act as to notice and counsel should be followed in connection with judicial hearing afforded persons found not guilty by reason of insanity. *Bolton v. Harris*, 395 F.2d 642 (D.C. Cir. 1968), superseded in part by statute, *United States v. Cohen*, 733 F.2d 128, (D.C. Cir.), *DeVeau v. United States*, App. D.C., 483 A.2d 307 (1984).

Commitment without hearing to determine condition. — The objective of prehearing commitment following acquittal on the ground of insanity is observation and examination to ascertain current mental condition, and the commitment is temporary and of limited duration; procedure contemplates judicial hearing and determination on present mental condition promptly after completion of examination, and, if need be, another commitment with view to course of treatment that might lead to patient's eventual recovery and release. *Ashe v. Robinson*, 450 F.2d 681 (D.C. Cir. 1971).

Proof of insanity after commitment. — Once a man has been committed to a hospital after a verdict of not guilty by reason of insanity, the government need not thereafter be forced to prove his insanity as price of continuing treatment. *Overholser v. Lynch*, 288 F.2d 388 (D.C. Cir. 1961), rev'd on other grounds, 369 U.S. 705, 82 S. Ct. 1063, 8 L. Ed. 2d 211 (1962).

Indeterminate commitment is not justified by bare reasonable doubt as to past sanity of the accused. *Lynch v. Overholser*, 369 U.S. 705, 82 S. Ct. 1063, 8 L. Ed. 2d 211 (1962), superseded in part by statute, *United States v. Mendelsohn*, App. D.C., 443 A.2d 1311 (1982).

Section assures prompt opportunity for release of recovered acquittee. — Because a hearing is provided within 50 days of the commitment, there is assurance that every acquittee has prompt opportunity to obtain release if he has recovered. *Jones v. United States*, 463 U.S. 354, 103 S. Ct. 3043, 77 L. Ed. 2d 694 (1983).

Absence of jury at 50-day hearing is justified by the fact that the acquittee has had a right to a jury determination of his sanity at the time of the offense. *Jones v. United States*, 463 U.S. 354, 103 S. Ct. 3043, 77 L. Ed. 2d 694 (1983).

Length of acquittee's hypothetical criminal sentence irrelevant to duration of commitment. — The length of the acquittee's hypothetical criminal sentence does not provide the constitutional limit for his commitment and is irrelevant to the purposes of his commitment. *Jones v. United States*, 463 U.S. 354, 103 S. Ct. 3043, 77 L. Ed. 2d 694 (1983).

Differences in proof requirements for post-acquittal and civil commitments justified. — The differences in allocation of the

burden of proof and the standard of proof used in confinement following an acquittal by reason of insanity under subsection (d) of this section and civil commitment under § 21-545(b) are justified by reason of the situational differences between acquittees and committees. *Jones v. United States*, App. D.C., 432 A.2d 364 (1981), *aff'd*, 463 U.S. 354, 103 S. Ct. 3043, 77 L. Ed. 2d 694 (1983).

The preponderance of the evidence standard comports with due process for commitment of insanity acquittees. *Jones v. United States*, 463 U.S. 354, 103 S. Ct. 3043, 77 L. Ed. 2d 694 (1983).

Acquittee's indefinite commitment not unconstitutional on basis of difference in proof requirements. — An insanity acquittee's indefinite commitment is not unconstitutional because the proof of his insanity was based only on a preponderance of the evidence, as compared to civil commitment requirement of proof by clear and convincing evidence. *Jones v. United States*, 463 U.S. 354, 103 S. Ct. 3043, 77 L. Ed. 2d 694 (1983).

IV. INSANITY DEFENSE.

Purpose of subsection (j) of this section is to prevent the insanity defense from being interposed unexpectedly at trial when the government is not prepared with evidence to meet it. *Marcey v. Harris*, 287 F. Supp. 73 (D.D.C.), modified, 400 F.2d 772 (D.C. Cir. 1968).

Constructive waiver of Fifth Amendment privilege as to sanity determination. — Where the defendant puts his sanity in issue, he is constructively deemed to have waived his Fifth Amendment privilege with respect to the sanity determination. *White v. United States*, App. D.C., 451 A.2d 848 (1982).

Request for bifurcated trial on issues of self-defense and insanity. — A substantial proffer both on the merits and the issue of responsibility is required to support a request for a bifurcated trial on the issues of self-defense and insanity. *Kleinbart v. United States*, App. D.C., 426 A.2d 343 (1981).

There is vast difference between that mental state which permits accused to be tried and that which permits him to be held responsible for crime, and in view of fact that an examination made for the purpose of determining competency to stand trial requires less than an examination designed to determine sanity for the purpose of criminal responsibility, it is not to be assumed that a psychiatrist who has been ordered to prepare an opinion as to man's trial competency will conduct a type of examination which is necessary to provide the trier of facts with information essential for a proper determination of criminal responsibility. *Winn v. United States*,

270 F.2d 326 (D.C. Cir. 1959), cert. denied, 365 U.S. 848, 81 S. Ct. 810, 5 L. Ed. 2d 812 (1961).

Determination of criminal responsibility focused on past mental condition. — For purposes of determining criminal responsibility, that is, whether act charged, if committed, was product of mental disease or defect, inquiry is focused on past mental condition, namely at time of offense. *Bolton v. Harris*, 395 F.2d 642 (D.C. Cir. 1968).

Criminal responsibility on issue of fact. — While issue of criminal responsibility of defendant suffering from mental disease is not an issue of fact in same sense as the commission of the offense, it still is an issue of fact. *Douglas v. United States*, 239 F.2d 52 (D.C. Cir. 1956).

Test of criminal responsibility. — A person is not responsible for criminal conduct if at the time of such conduct as result of mental disease or defect he lacks substantial capacity to appreciate the wrongfulness of his conduct or to conform his conduct to the requirements of the law. *United States v. Brawner*, 471 F.2d 969 (D.C. Cir. 1972), superseded by statute on other grounds, *Shannon v. United States*, 512 U.S. —, 114 S. Ct. 2419, 129 L. Ed. 2d 459 (1994); *United States v. Shorter*, App. D.C., 343 A.2d 569 (1975); *Bethea v. United States*, App. D.C., 365 A.2d 64 (1976), cert. denied, 433 U.S. 911, 97 S. Ct. 2979, 53 L. Ed. 2d 1095 (1977).

To prevail in an insanity defense, defendant was required to prove by a preponderance of the evidence that, as a result of a mental disease or defect, he lacked substantial capacity either to conform his conduct to the requirements of the law or to recognize the wrongfulness of his conduct. *Wilkes v. United States*, App. D.C., 631 A.2d 880 (1993), cert. denied, — U.S. —, 115 S. Ct. 143, 130 L. Ed. 2d 84 (1994).

Mental disease or defect. — The term "mental disease or defect" includes any abnormal condition of the mind which substantially affects mental or emotional processes and substantially impairs behavior controls. *United States v. Brawner*, 471 F.2d 969 (D.C. Cir. 1972), superseded by statute on other grounds, *Shannon v. United States*, 512 U.S. —, 114 S. Ct. 2419, 129 L. Ed. 2d 459 (1994); *Bethea v. United States*, App. D.C., 365 A.2d 64 (1976), cert. denied, 433 U.S. 911, 97 S. Ct. 2979, 53 L. Ed. 2d 1095 (1977).

As used in the standard for determining criminal responsibility, the terms "mental disease or defect" do not include an abnormality manifested only by repeated criminal or otherwise antisocial conduct. *Bethea v. United States*, App. D.C., 365 A.2d 64 (1976), cert. denied, 433 U.S. 911, 97 S. Ct. 2979, 53 L. Ed. 2d 1095 (1977).

Exculpation from guilt is established not by mental disease or defect alone but only if as a result defendant lacks the substan-

tial capacity required for responsibility. *United States v. Brawner*, 471 F.2d 969 (D.C. Cir. 1972), superseded by statute on other grounds, *Shannon v. United States*, 512 U.S. —, 114 S. Ct. 2419, 129 L. Ed. 2d 459 (1994).

Test to be applied prospectively. — The rule that a person is not responsible for criminal conduct if at the time of such conduct as result of mental disease or defect he lacks substantial capacity to appreciate the wrongfulness of his conduct or to conform his conduct to the requirements of the law is prospective in its application and applies only to trial commencing after June 23, 1972. *United States v. Brawner*, 471 F.2d 969 (D.C. Cir. 1972), superseded by statute on other grounds, *Shannon v. United States*, 512 U.S. —, 114 S. Ct. 2419, 129 L. Ed. 2d 459 (1994); *Bethea v. United States*, App. D.C., 365 A.2d 64 (1976), cert. denied, 433 U.S. 911, 97 S. Ct. 2979, 53 L. Ed. 2d 1095 (1977).

A defendant is entitled to verdict of not guilty on ground of insanity, if jury finds that the offense charged was an insane act by application of any one of 3 tests: whether defendant was able to distinguish between right and wrong, able to adhere to right and refrain from doing wrong, or suffered from mental disease or defect which caused criminal act. *United States v. Fielding*, 148 F. Supp. 46 (D.D.C.), rev'd on other grounds, 251 F.2d 878 (D.C. Cir. 1957).

Mental retardation a basis for insanity defense. — Mental retardation, being mental defect capable of affecting both mental processes and behavior controls to extent that defendant in given situation might not be able to appreciate wrongfulness of his conduct or might not be able to conform his conduct to requirements of law, is a basis for insanity defense. *United States v. Shorter*, App. D.C., 343 A.2d 569 (1975).

Insanity defense based on alcoholic addiction. — Where there was ample, relevant evidence, the issue of insanity could be submitted to the jury on the theory that alcoholic addiction and brain damage had impaired the defendant's behavioral control to the extent that he lacked substantial capacity to appreciate wrongfulness of his conduct or to conform his conduct to requirements of the law. *Cooper v. United States*, App. D.C., 368 A.2d 554 (1977).

Insanity defense where defendant believed illegal conduct is morally justified. — The defense of insanity should not be foreclosed in all cases to those who may be fully aware of law's requirements, but because of a delusion resulting from a mental disease or defect believe their conduct to be morally justified. *Bethea v. United States*, App. D.C., 365 A.2d 64 (1976), cert. denied, 433 U.S. 911, 97 S. Ct. 2979, 53 L. Ed. 2d 1095 (1977).

Defendant has right to assistance of court in developing basis for insanity defense, and such assistance may take form of commitment for mental examination, examination through Mental Health Commission or Legal Psychiatric Service, or appointment of private experts. *Brown v. United States*, 331 F.2d 822 (D.C. Cir. 1964).

Constitutionality of commitment for examination. — Where accused raised defense of insanity so that it was necessary to conduct an examination of his person, there was nothing arbitrary or unconstitutional in committing him for reasonable length of time to mental hospital in order that examination might be conducted and accused was not thereby deprived of his right to bail. *Battle v. Cameron*, 260 F. Supp. 804 (D.D.C. 1966).

Role of psychiatrist conducting court-ordered examination. — Until a psychiatrist who is examining a subject pursuant to court order reaches a diagnosis or while he is in process of changing a diagnosis he is a neutral expert and ex parte communications between himself and either the defense or the prosecution are out of place; however, the situation changes when the psychiatrist renders the diagnosis, becomes identified as a prosecution or defense witness and confers with attorneys for that side in preparation for trial. *United States v. Morgan*, 567 F.2d 479 (D.C. Cir. 1977).

Sharing government psychiatrist's information with opposing counsel. — Common notions of fairness suggest that communications which provide a government psychiatrist with information on which he may base an opinion as to a defendant's mental condition should be shared with opposing counsel. *United States v. Morgan*, 567 F.2d 479 (D.C. Cir. 1977).

Denial of opportunity to establish insanity defense. — Defendant who was denied a pretrial mental examination and thus lacked an opportunity to establish the basis of an insanity defense could not be charged with acquiescing in subsequently appointed counsel's failure to assert defense. *Cannady v. United States*, 351 F.2d 817 (D.C. Cir. 1965).

When the trial court is satisfied that it can, without appointment of additional experts, resolve issue of competence to stand trial, failure to make additional appointments on resolution of issue of competence is not a denial of expert assistance for establishing the substantive defense of insanity. *United States v. Caldwell*, 543 F.2d 1333 (D.C. Cir. 1974), cert. denied, 423 U.S. 1087, 96 S. Ct. 877, 47 L. Ed. 2d 97 (1976).

Reversible error occurred where the defendant's counsel was not notified or furnished results of mental examination of defendant until the day of trial and was therefore unable to prepare insanity defense. *United States v. Henry*, 528 F.2d 661 (D.C. Cir. 1976).

Defendant's right to psychiatric services. — Examinations of the defendant by government psychiatrists during a 15-day confinement at a government hospital and a 50-minute examination conducted by a psychiatrist by order of the court were not equivalent to the indigent defendant's right to psychiatric services necessary to an adequate defense and it was error for trial court to deny defendant's timely request for psychiatric assistance. *United States v. Chavis*, 486 F.2d 1290 (D.C. Cir. 1973).

Court supervision of expert testimony. — The trial court must carefully supervise the testimony and examination of expert witnesses on the issue of the insanity defense in an effort to ensure that the factual bases for their proffered conclusions are aired fully and in a manner which is comprehensible to laymen. *Bethea v. United States*, App. D.C., 365 A.2d 64 (1976), cert. denied, 433 U.S. 911, 97 S. Ct. 2979, 53 L. Ed. 2d 1095 (1977).

Whenever evidence suggests substantial question of defendant's sanity at time of crime, judge must conduct inquiry designed to assure that the defendant has been fully informed of the alternatives available, comprehends the consequences of failing to assert an insanity defense, and freely chooses to raise or waive the defense. *Freundak v. United States*, App. D.C., 408 A.2d 364 (1979).

Defendant may waive insanity defense. — If a defendant has acted intelligently and voluntarily, a trial court must defer to his or her decision to waive the insanity defense. *Freundak v. United States*, App. D.C., 408 A.2d 364 (1979).

But he has no constitutional right to do so. *North Carolina v. Alford*, 400 U.S. 25, 91 S. Ct. 160, 27 L. Ed. 2d 162 (1970) does not imply a constitutional right in a defendant to forego the insanity defense. *Freundak v. United States*, App. D.C., 408 A.2d 364 (1979).

Court determination of intelligent waiver. — A finding of competency to stand trial is not in itself, sufficient indication that the defendant is capable of intelligently waiving an insanity defense and the court should look further than this when deciding whether to raise the defense *sua sponte*. *Freundak v. United States*, App. D.C., 408 A.2d 364 (1979).

Insanity defense interposed sua sponte by trial court. — A decision of the trial court to *sua sponte* interpose an insanity defense, especially when taken against the wishes of the accused, necessitates the utmost care in judgment and requires consideration of many factors. *United States v. Bradley*, 463 F.2d 808 (D.C. Cir. 1972).

The Supreme Court's decision in *Faretta v. California*, 422 U.S. 806, 95 S. Ct. 2525, 45 L. Ed. 2d 562 (1975) does not make it unconstitutional for a trial court to interpose an insanity

defense over defendant's objections. *Freundak v. United States*, App. D.C., 408 A.2d 364 (1979).

A trial judge has the discretion to interpose an insanity defense *sua sponte* against the will of a defendant competent to stand trial; that discretion, however, is limited, in that the judge must respect the choice of a defendant capable of voluntarily and intelligently making that choice waive an insanity defense. *Freundak v. United States*, App. D.C., 408 A.2d 364 (1979).

Differing views of experts to aid judge's exercise of discretion. — When differing views of experts exist on issue of defendant's sanity at time of offense and the views supporting the insanity defense are not inherently incredible, their presentation in an on-the-record inquiry aids the trial judge in exercising in an informed manner his discretion as to whether to interpose the insanity defense. *United States v. David*, 511 F.2d 355 (D.C. Cir. 1975).

Requirement of affirmatively establishing insanity by preponderance of evidence is constitutional. — The prohibition against acquittals on the ground of insanity unless such insanity is affirmatively established by a preponderance of the evidence is constitutional. *Doepel v. United States*, App. D.C., 434 A.2d 449, cert. denied, 454 U.S. 1037, 102 S. Ct. 580, 70 L. Ed. 2d 483 (1981).

To require defendant to assume burden of proof on issue of insanity does not violate due process. *United States v. Naples*, 192 F. Supp. 23 (D.D.C. 1961), rev'd on other grounds, 307 F.2d 618 (D.C. Cir. 1962).

The requirement that accused prove insanity defense by preponderance of evidence does not deny equal protection merely because different standard of proof concerning such defense is applicable in other federal jurisdictions. *United States v. Greene*, 489 F.2d 1145 (D.C. Cir. 1973), cert. denied, 419 U.S. 977, 95 S. Ct. 239, 42 L. Ed. 2d 190 (1974).

Effect of amendment of statutory provision on burden of proof. — Where the offenses with which the defendant was charged were committed at time when the prosecution had the burden of proving criminal responsibility beyond a reasonable doubt once defendant had raised an insanity defense, and the statute was thereafter amended to preclude acquittal on ground of insanity unless insanity was affirmatively established by a preponderance of the evidence, and defendant raised insanity defense, the giving of an instruction, over objection, that defendant had burden of establishing his insanity defense by a preponderance of the evidence violated the *ex post facto* clause of the Constitution. *United States v. Williams*, 475 F.2d 355 (D.C. Cir. 1973).

Adoption of diminished capacity concepts province of legislature. — The potential impact of concepts such as diminished

capacity or partial insanity, however labeled, is of a scope and magnitude which precludes their proper adoption by an expedient modification of rules of evidence; if such principles are to be incorporated into law of criminal responsibility, change should lie within providence of legislature. *Bethea v. United States*, App. D.C., 365 A.2d 64 (1976), cert. denied, 433 U.S. 911, 97 S. Ct. 2979, 53 L. Ed. 2d 1095 (1977).

Scope and magnitude of concepts of diminished capacity or partial insanity are such that their adoption is solely within the province of the legislature and cannot be effected by expedient modification of the rules of evidence. *Jones v. United States*, App. D.C., 386 A.2d 308 (1978), cert. denied, 444 U.S. 925, 100 S. Ct. 263, 62 L. Ed. 2d 181 (1979).

Evidence taken in proceeding to determine competency to stand trial could not be used to sustain verdict of not guilty by reason of insanity. *In re Williams*, 165 F. Supp. 879 (D.D.C. 1958).

Past criminal and antisocial actions are not admissible as evidence of mental disease unless accompanied by expert testimony, supported by showing of the concordance of a responsible segment of professional opinion, that the particular characteristics of these actions constitute convincing evidence of an underlying mental disease that substantially impairs behavioral controls. *United States v. Brawner*, 471 F.2d 969 (D.C. Cir. 1972), superseded by statute on other grounds, *Shannon v. United States*, 512 U.S. —, 114 S. Ct. 2419, 129 L. Ed. 2d 459 (1994).

Evidence of mental condition at given time is relevant to determination of mental condition at another time not unreasonably far removed, and it might be proper to inquire as to probability that as of time of act charged, an accused's mental condition was the same as it was found to be somewhat earlier, or somewhat later. *Blunt v. United States*, 244 F.2d 355 (D.C. Cir. 1957).

Where defendant committed crime while under continuing adjudication of insanity the jury could presume that he was still insane when he committed the offense, but that presumption was not conclusive; rather, the continuing adjudication of insanity was sufficient to prove insanity by a preponderance of the evidence within the meaning of subsection (j) of this section unless the government's evidence sufficed to raise enough doubt that the defendant failed to carry his burden. *Gilbert v. United States*, App. D.C., 395 A.2d 1 (1978).

Continuance for mental examination. — A continuance should be allowed on clear showing of need for mental examination or for appointment of independent psychiatrist. *Brown v. United States*, App. D.C., 244 A.2d 487 (1968).

Proffer of facts in motion for continuance. — Counsel may in his motion for continuance offer to make ex parte proffer of facts showing need for mental examination and for appointment of independent psychiatrist. *Brown v. United States*, App. D.C., 244 A.2d 487 (1968).

Hearing to determine if insanity defense should be raised sua sponte. — Where evidence suggested that the defendant might have been unable to control himself at time he committed murder and other bizarre acts, the trial court characterized those acts as impulsive and frenzied when it reduced charge from first degree to second degree murder, defense counsel believed the insanity defense appropriate but refused to raise it only because the defendant prohibited him from doing so, the reason for defendant's opposition was the belief that insanity defense would impugn on the credibility of his racial and political views and testimony of 2 of 4 physicians who examined defendant expressed views supportive of an insanity plea, the trial court acted properly in ordering hearing to determine if the insanity defense should be raised sua sponte. *United States v. Robertson*, 507 F.2d 1148 (D.C. Cir. 1974), later op., 529 F.2d 879 (D.C. Cir. 1976), overruled on other grounds, *United States v. Marble*, 940 F.2d 1543 (D.C. Cir. 1991).

Use of examining doctor's testimony at trial. — Where a doctor, who had examined the defendant for the purpose of determining his mental competency to stand trial, did not testify to any statement made by the defendant on the issue of guilt and judge's finding of mental competency to stand trial was not brought to notice of jury statute did not bar doctor's testimony expressing his opinion that defendant was sane when he committed act. *Edmonds v. United States*, 273 F.2d 108 (D.C. Cir. 1959), cert. denied, 362 U.S. 977, 80 S. Ct. 1062, 4 L. Ed. 2d 1012 (1960).

Informing jury of consequences of acquittal by reason of insanity. — When accused person has pleaded insanity, counsel may and judge should inform jury that if he is acquitted by reason of insanity he will be presumed to be insane and may be confined in hospital for insane as long as public safety and welfare require. *Taylor v. United States*, 222 F.2d 398 (D.C. Cir. 1955).

In instructing that even though defendant did not have abnormal mental condition that absolves him of criminal responsibility, he may have had condition that negatives the specific mental state required for a higher degree of crime, the trial court may not substitute for the term "abnormal mental condition" any other terms such as "mental unsoundness." *United States v. Brawner*, 471 F.2d 969 (D.C. Cir. 1972), superseded by statute on other grounds,

Shannon v. United States, 512 U.S. —, 114 S. Ct. 2419, 129 L. Ed. 2d 459 (1994).

A charge to the jury on the issue of the insanity defense should leave no doubt that it is for jury alone to determine the existence of a cognizable mental disease or defect regardless of the nature and extent of the experts' testimony, whether such a disability resulted in a substantial impairment of the accused's capacity to obey the law and consequently whether there existed a sufficient relationship between the mental abnormality and the condemned behavior to warrant the conclusion that the defendant should not be held responsible for his acts. *Bethea v. United States*, App. D.C., 365 A.2d 64 (1976), cert. denied, 433 U.S. 911, 97 S. Ct. 2979, 53 L. Ed. 2d 1095 (1977).

The District Court is constitutionally authorized to instruct the jury, pursuant to subsection (j) of this section, that defendants bore burden of proving by a preponderance of the evidence their insanity defenses as to the nonfederal charges on trial. *United States v. Caldwell*, 543 F.2d 1333 (D.C. Cir. 1974), cert. denied, 423 U.S. 1087, 96 S. Ct. 877, 47 L. Ed. 2d 97 (1976).

Instruction on consequences of insanity acquittal. — In prosecution for murder, instruction that if verdict of not guilty by reason of insanity was returned defendant would be committed to mental hospital until such time as it was established that he was no longer insane, was not objectionable for failure to add that he would be kept in hospital until he would not in reasonable future be dangerous to himself or others. *Starr v. United States*, 264 F.2d 377 (D.C. Cir. 1958), cert. denied, 359 U.S. 936, 79 S. Ct. 652, 3 L. Ed. 2d 639 (1959).

Prejudicial remark. — Where judge told jury that hospital Acting Superintendent had advised court that accused was found competent to stand trial and assist in his own defense, and after stating that court would commit accused to hospital if he were found not guilty by reason of insanity, judge added that accused would remain there until determined to be "of sound mind" by hospital authorities and that "if the authorities adhered to their last opinion on this point, he will be released very shortly," latter statement was highly prejudicial since it implied a warning that dire consequences might result from finding that accused was not guilty by reason of insanity. *Durham v. United States*, 237 F.2d 760 (D.C. Cir. 1956).

Directed verdict of not guilty by reason of insanity. — In an appropriate case, there is a duty to set aside a verdict of guilty and to direct verdict of not guilty by reason of insanity; though this duty is to be performed with caution because of deference due jury in resolving factual issues. *Douglas v. United States*, 239 F.2d 52 (D.C. Cir. 1956).

Since the burden is on the defense to prove

insanity, and since the jury is always free to find a defendant sane even if the government does not contradict expert testimony by witnesses of its own, the court should only in exceptional circumstances take case from jury by directing verdict of insanity. *United States v. Tyler*, App. D.C., 376 A.2d 798 (1977).

Assuming that the trial court may direct a verdict for a defendant on the insanity question, the evidence would have to be virtually conclusive since the defendant has the burden of proving insanity by a preponderance of the evidence under subsection (j) of this section. *Gilbert v. United States*, App. D.C., 395 A.2d 1 (1978).

Remand with instructions following review. — Where it appeared to Court of Appeals reviewing a conviction that the evidence did not permit trier of fact to conclude beyond a reasonable doubt that defendant had no mental disease or defect, case would be remanded with instructions that unless the Government advised the trial court without unreasonable delay that it can meet its burden of proof at a new trial, defendant is to be acquitted on ground of insanity and committed to a mental hospital. *Hopkins v. United States*, 275 F.2d 155 (D.C. Cir. 1959).

Where a trial court, in a criminal prosecution, should have directed a judgment of acquittal by reason of insanity, notwithstanding the verdict, judgment of conviction would be vacated on appeal and case remanded with directions. *Isaac v. United States*, 284 F.2d 168 (D.C. Cir. 1960).

Acquiescence in insanity defense. — A finding that a petitioner had evidenced his acquiescence in insanity defense by waiting almost 4 years to attack validity of his mandatory commitment was not warranted in light of petitioner's apparent disabilities, including his lack of financial means and learning in the law and the likelihood that he had been suffering from some mental illness. *Rouse v. Cameron*, 387 F.2d 241 (D.C. Cir. 1967).

Defendant who did not understand proceedings entitled to new trial. — Where the court found the defendant not guilty by reason of insanity and it did not appear that defendant actually understood that the question of his guilt was being tried without witnesses or evidence and he protested promptly a few days after the verdict, the defendant was entitled to a new trial. *Rucker v. United States*, 280 F.2d 623 (D.C. Cir. 1960).

V. RELEASE FROM CONFINEMENT.

Insanity Defense Reform Act. — If Congress had intended the release provisions of the Insanity Defense Reform Act to apply to patients already committed under District of Columbia law, it would have included specific

language making 18 U.S.C. § 4243(f) applicable to § 24-301 committees. *United States v. Crutchfield*, 893 F.2d 376 (D.C. Cir. 1990).

Congress intended District of Columbia Code to govern petitions for release made by persons acquitted, by reason of insanity, of federal offenses under this section prior to the Insanity Defense Reform Act's passage but seeking release subsequent to its passage. *United States v. Crutchfield*, 893 F.2d 376 (D.C. Cir. 1990).

Application of District of Columbia Code's commitment provisions to federal defendants in District of Columbia subsequent to Congress' enactment of the Insanity Defense Reform Act did not constitute an equal protection violation. *United States v. Crutchfield*, 893 F.2d 376 (D.C. Cir. 1990).

Higher level of scrutiny required to evaluate constitutionality of certain policies challenged under subsection (k). — Standard of review established in *Tribby v. Cameron*, 379 F.2d 104 (D.C. Cir. 1967), where constitutionality of restrictions imposed on mental patients by hospital in furtherance of treatment was determined by whether hospital had made a permissible and reasonable decision in view of relevant information within a broad range of discretion, may be an appropriate measure in most subsection (k) motions but is an inadequate measure for a challenge based on the constitutional dimensions of a particular policy or decision, and where there is no direct authority validating the constitutionality of a basic intrusion imposed by a challenged policy, a higher level of scrutiny is required. *United States v. Hinckley*, 725 F. Supp. 616 (D.D.C. 1989).

Purpose of provisions respecting release of committed acquittees is to assure that members of an exceptional class be kept under hospital restraint until the court, in a reviewable exercise of discretion, approves relaxation of that restraint. *Hough v. United States*, 271 F.2d 458 (D.C. Cir. 1959).

The principal concern in governing release of persons committed after being found not guilty by reason of insanity is for procedures to protect public from premature release of dangerous persons. *Green v. United States*, 349 F.2d 203 (D.C. Cir. 1965).

Congress intended there to be a separate release hearing after commitment and evaluation of the acquittee in a hospital setting. *United States v. Mendelsohn*, App. D.C., 443 A.2d 1311 (1982).

Release hearing should follow some period of confinement, however short. *United States v. Mendelsohn*, App. D.C., 443 A.2d 1311 (1982).

Statutory 50-day period authorized for prehearing evaluation is a maximum, not a minimum. *United States v. Mendelsohn*, App. D.C., 443 A.2d 1311 (1982).

A criminal defendant who is found not guilty by reason of insanity may be granted a conditional release from the hospital if the court finds that the acquittee, although mentally ill, will not in the reasonable future be dangerous to himself or herself or others. The dual purposes of this procedure are, first, the treatment and recovery of the patient and, second, the protection of society and the patient. *Reese v. United States*, App. D.C., 614 A.2d 506 (1992).

Continued confinement depends upon present mental condition. — Continued confinement of one involuntarily committed on being acquitted of an offense by reason of insanity depends not upon fact that he committed the acts, but upon his present mental condition. *Rouse v. Cameron*, 373 F.2d 451 (D.C. Cir. 1966).

An insanity acquittee who has either regained his sanity or is no longer a danger to himself or society may no longer be confined in a mental institution pursuant to the insanity judgment. *Hearne v. United States*, App. D.C., 631 A.2d 52 (1993).

The dangerousness demonstrated by the commission of a crime and subsequent acquittal by reason of insanity constitute rational basis for disparity in statutory provisions which require court approval for release of mental patient who has been acquitted of criminal charges by reason of insanity but which do not provide for any court review of release of a person civilly committed. *United States v. Ecker*, 543 F.2d 178 (D.C. Cir. 1976), cert. denied, 429 U.S. 1063, 97 S. Ct. 788, 50 L. Ed. 2d 779 (1977).

Examination by hospital staff and outside physicians. — A patient committed after insanity acquittal is entitled to periodic examinations by hospital staff and right to be examined by outside psychiatrist and, if 1 of examining physicians believes he should no longer be hospitalized, he is entitled to court hearing. *Bolton v. Harris*, 395 F.2d 642 (D.C. Cir. 1968).

Release following expiration of maximum period of criminal sentence. — Confinement of an insanity acquittee should never exceed maximum sentence for the underlying criminal offense, less mandatory release time. *United States v. Brown*, 478 F.2d 606 (D.C. Cir. 1973).

There is no basis for confining an acquittee under subsection (d) of this section beyond the length of the hypothetical maximum prison term, since that term marks the end of society's claim on that individual for any kind of punishment. *Jones v. United States*, App. D.C., 411 A.2d 624 (1980).

Application of standards for release from civil commitment. — Equal protection is not offended by allowing the government or the court an opportunity to insure that stan-

dards for the release of civilly committed patients are faithfully applied to patients committed after having been found not guilty by reason of insanity. *Bolton v. Harris*, 395 F.2d 642 (D.C. Cir. 1968), superseded in part by statute, *United States v. Cohen*, 733 F.2d 128 (D.C. Cir.), *DeVeau v. United States*, (D.C. App.) 483 A.2d 307 (1984).

Where insanity-acquitted individual has been in detention for considerable period of time, his continued detention vel non should be governed by same standard of burden of proof applied to civil commitments. *United States v. Brown*, 478 F.2d 606 (D.C. Cir. 1973).

After expiration of the period for which an acquittee might have been incarcerated had he been convicted, it is unconstitutional to discriminate against acquittee, as compared with one who has been civilly committed, for purposes of release from indefinite commitment. *Waite v. Jacobs*, 475 F.2d 392 (D.C. Cir. 1973).

Trial court is without discretion to release acquittee before commitment order is put into effect. *United States v. Mendelsohn*, App. D.C., 443 A.2d 1311 (1982).

Questions of fact and law in determining release. — The likelihood of future misconduct of the mental patient who seeks release from confinement, the type of misconduct to be expected, and its probable frequency are questions of fact; whether the expected harm, and its apparent likelihood, are sufficiently great to warrant coercive intervention are questions of law. *Dixon v. Jacobs*, 427 F.2d 589 (D.C. Cir. 1970), overruled on other grounds, *United States v. Ecker*, 543 F.2d 178 (D.C. Cir. 1976).

Requirements for unconditional release. — To demonstrate that he is entitled to unconditional release, the patient must show that he has recovered, that he will not in the reasonable future be dangerous to others and that superintendent acted arbitrarily and capriciously in refusing to certify him and recommend him for unconditional release. *Overholser v. Russell*, 283 F.2d 195 (D.C. Cir. 1960).

It is entirely rational for District to require acquittee to prove his entitlement to release where he was the one to advocate the fact of his past insanity. *Jones v. United States*, App. D.C., 432 A.2d 364 (1981), aff'd, 463 U.S. 354, 103 S. Ct. 3043, 77 L. Ed. 2d 694 (1983).

A mental hospital patient who was committed following his acquittal by reason of insanity is not entitled to automatic release from commitment upon expiration of his hypothetical maximum prison sentence unless civil commitment proceedings are instituted by the government. *Jones v. United States*, App. D.C., 432 A.2d 364 (1981), aff'd, 463 U.S. 354, 103 S. Ct. 3043, 77 L. Ed. 2d 694 (1983).

Subsection (d) commitments are neither expressly nor impliedly related to statutory max-

imum sentences. That subsection contemplates an indeterminate period of confinement and treatment, depending on when the patient has recovered his sanity or no longer poses a danger to himself or others. *Jones v. United States*, App. D.C., 432 A.2d 364 (1981), aff'd, 463 U.S. 354, 103 S. Ct. 3043, 77 L. Ed. 2d 694 (1983).

Defendant's burden of proof in seeking release. — Petitioner for writ of habeas corpus has heavy burden of proof that he is not dangerous or potentially dangerous to himself or others, exceeding a standard of proof by a preponderance of evidence. *Ragsdale v. Overholser*, 281 F.2d 943 (D.C. Cir. 1960), overruled on other grounds, *Bolton v. Harris*, 395 F.2d 642 (D.C. Cir. 1968), superseded by statute on other grounds, *United States v. Cohen*, 733 F.2d 128 (D.C. Cir.), *DeVeau v. United States*, App. D.C., 483 A.2d 307 (1984).

Person seeking release from commitment has burden of proving by a preponderance of evidence that he has recovered his sanity, and would not in reasonably foreseeable future be dangerous to himself or others by reason of mental disease or defect, and that failure of superintendent of hospital to certify him for release was arbitrary or capricious. *Robertson v. Cameron*, 224 F. Supp. 60 (D.D.C. 1963).

Petitioner seeking release from hospital by writ of habeas corpus has burden of showing his eligibility for relief and must establish freedom from such abnormal mental condition as would make individual dangerous to himself or community in reasonably foreseeable future. *Collins v. Cameron*, 377 F.2d 945 (D.C. Cir. 1967).

At hearing instituted by confined party, found not guilty by reason of insanity, to determine need of his further confinement at psychiatric hospital, the burden of proof at such hearing was on the confined party to establish that he was both sane and not dangerous to himself or others. *Harris v. United States*, App. D.C., 356 A.2d 630 (1976).

In the course of a release hearing under subsection (d)(2) of this section, the insanity acquittee bears the burden of proving by a preponderance of the evidence that he is entitled to release. *United States v. Henry*, 600 F.2d 924 (D.C. Cir. 1979).

The acquittee seeking release has the burden of proving by a preponderance of the evidence that it is at least more probable than not that the acquittee will not be violently dangerous in the reasonable future. *United States v. Gallo*, 117 WLR 2081 (Super. Ct. 1989).

There is a statutorily-imposed presumption of dangerousness arising from an acquittal by reason of insanity, which the acquittee must overcome in order to secure release. *United States v. Lightfoot*, 119 WLR 1845 (Super. Ct. 1991).

This section not only limits conditional re-

lease of mentally ill criminal acquittees to those who will not in the reasonable future be dangerous to himself or herself or others, but places the burden of proof to demonstrate, by a preponderance of the evidence, entitlement to conditional release on the acquittee. *Reese v. United States*, App. D.C., 614 A.2d 506 (1992).

It is not unconstitutional to place the burden of proof on the insanity acquittee seeking release to prove his right to release by a preponderance of the evidence. *Hearne v. United States*, App. D.C., 631 A.2d 52 (1993).

This section does not entitle defendant to absolute right to waive post-verdict judicial hearing to determine eligibility for release from a psychiatric treatment facility (*Bolton v. Harris*, 395 F.2d 642 (D.C. Cir. 1968)), and therefore it is not error for a court to refuse to accept such waiver. *Adams v. United States*, App. D.C., 502 A.2d 1011 (1986).

Absence of jury right at release hearing. — Because an acquittee has a right to a jury determination of past insanity at his criminal trial, and it is reasonable to presume the continuation of a mental illness, and a jury right in commitment proceedings is not as meaningful as it is in ordinary criminal cases, the absence of a jury right at a subsection (d) release hearing is not a substantial difference vis-à-vis civil commitment. *Jones v. United States*, App. D.C., 432 A.2d 364 (1981), *aff'd*, 463 U.S. 354, 103 S. Ct. 3043, 77 L. Ed. 2d 694 (1983).

Recovery sufficient for conditional release. — To order conditional release upon, the court must conclude that the individual has recovered sufficiently so that under proposed conditions, or under conditions which this section empowers court to impose, such person will not in the reasonable future be dangerous to himself or others. *Hough v. United States*, 271 F.2d 458 (D.C. Cir. 1959).

In ordering the conditional release of a patient committed to the hospital after having been found not guilty by reason of insanity, the court must conclude that the individual has recovered sufficiently so that under the proposed conditions of release person will not in reasonable future be dangerous to himself or others. *United States v. Charnizon*, App. D.C., 232 A.2d 586 (1967).

Conditional release for Thanksgiving and Christmas holidays authorized. — The trial court has the authority to grant conditional release under subsection (e) of this section for the Thanksgiving and Christmas holidays with provisions having been made for family supervision. *Shuler v. United States*, App. D.C., 422 A.2d 996 (1980).

Elucidation of factors which weigh in conditional release decision. — In determining whether patient who has been committed to hospital after being acquitted of crime by reason of insanity should be given conditional

release from hospital, hospital and trial court, which must approve hospital's recommendation for such release, should elucidate with specificity those factors which weigh heavily in their decisions. *United States v. Ecker*, 479 F.2d 1206 (D.C. Cir. 1973).

Notice of restriction on release. — Notice given by the hospital within 5 days to an insanity acquittee, all counsel, and the court that a restriction on release has been imposed, and the reasons therefor, is fully adequate to give the acquittee the opportunity to avail himself of a court hearing, which can be as expansive as necessary to fully litigate the appropriateness of the restriction. *United States v. Cotman*, 119 WLR 1173 (Super. Ct. 1991).

In considering whether to grant or revoke a patient's conditional release status, the trial judge may properly consider the hospital records, files, and psychiatric history of the acquittee, as well as the acquittee's demonstrated behavior, including the act for which he was prosecuted as well as any other prior crimes or bad acts. *Reese v. United States*, App. D.C., 614 A.2d 506 (1992).

Defendant may not be released if dangerous. — A defendant, acquitted because of insanity and committed to mental hospital because of the verdict, may not be released if, despite some recovery, doctors certify and in the exercise of its own function the court finds he is, and in the reasonably foreseeable future will be, dangerous because of mental disease or defect. *Starr v. United States*, 264 F.2d 377 (D.C. Cir. 1958), *cert. denied*, 359 U.S. 936, 79 S. Ct. 652, 3 L. Ed. 2d 639 (1959).

Presumption of continuing dangerousness is reasonable and valid. — The presumption of continuing dangerousness, which is rebuttable by the acquittee, is both reasonable and valid. *Jones v. United States*, App. D.C., 432 A.2d 364 (1981), *aff'd*, 463 U.S. 354, 103 S. Ct. 3043, 77 L. Ed. 2d 694 (1983).

Psychiatric testimony on future dangerousness. — The fact that Congress has chosen to permit psychiatrists to offer opinions on the issue of future dangerousness in specifically prescribed instances does not mean that absent specific legislation such testimony is admissible at other stages of those proceedings when Congress has chosen to remain silent. *In re Wilson*, 111 WLR 1065 (Super. Ct. 1983).

Resolution of reasonable doubts of defendant's dangerousness. — In a close case, even where the preponderance of evidence favors the petitioner's release, if reasonable doubt exists about the danger to the public or to the patient, it cannot be resolved so as to risk danger to the public or to the individual. *Ragsdale v. Overholser*, 281 F.2d 943 (D.C. Cir. 1960), *overruled on other grounds*, *Bolton v. Harris*, 395 F.2d 642 (D.C. Cir. 1968), *superse- ded by statute on other grounds*, *United*

States v. Cohen, 733 F.2d 128 (D.C. Cir.), *DeVeau v. United States*, App. D.C., 483 A.2d 307 (1984).

Although patient committed to hospital after having been found not guilty of crime by reason of insanity may have improved materially and appears to be a good prospect for restoration as useful member of society, if abnormal mental condition renders him potentially dangerous, reasonable medical doubts or reasonable judicial doubts are to be resolved in favor of public and in favor of subject's safety. *United States v. Charnizon*, App. D.C., 232 A.2d 586 (1967).

Danger to public need not be possible physical violence or crime of violence, but it is enough to preclude release of a person committed after insanity acquittal if there is competent evidence that he may commit any criminal act. *Overholser v. Russell*, 283 F.2d 195 (D.C. Cir. 1960).

Fact that person committed following insanity acquittal has some dangerous propensity does not, standing alone, warrant continued confinement but dangerous propensities must be related to or arise out of abnormal mental condition, whether such condition was that which constituted basis for acquittal. *Overholser v. O'Beirne*, 302 F.2d 852 (D.C. Cir. 1961); *Rouse v. Cameron*, 373 F.2d 451 (D.C. Cir. 1966).

Hospital's showing of adequate treatment. — A hospital need not show that treatment will cure or improve one involuntarily committed, but only that there is bona fide effort to do so, and this requires hospital to show that initial and periodic inquiries are made into needs and conditions of patient with view to providing suitable treatment for him, and that the program provided is suited to his particular needs. *Rouse v. Cameron*, 373 F.2d 451 (D.C. Cir. 1966).

Evidence that there has not only been a good faith effort to treat a defendant, who was committed to hospital for mentally ill following acquittal by reason of insanity, but that treatment provided is suited to defendant's needs and that his condition has improved during his confinement sufficiently establishes that defendant is being given adequate treatment. *United States v. Jackson*, 553 F.2d 109 (D.C. Cir. 1976).

Court may allow reasonable opportunity to initiate treatment. — If a court finds that the custody of mandatorily committed patient violates the Constitution for failure to provide treatment, it may allow hospital a reasonable opportunity to initiate treatment, but if opportunity for treatment has been exhausted or is otherwise inappropriate, conditional or unconditional release may be in order. *Rouse v. Cameron*, 373 F.2d 451 (D.C. Cir. 1966); *Tribby v. Cameron*, 379 F.2d 104 (D.C. Cir. 1967).

Challenge of statute where inmate not receiving treatment. — A mental hospital inmate who had been committed upon acquittal was entitled, in habeas corpus proceeding, to question constitutionality of mandatory commitment statute, as applied to inmate, on ground that he was not receiving treatments. *Darnell v. Cameron*, 348 F.2d 64 (D.C. Cir. 1965).

Failure to provide treatment not justified by lack of staff. — Continuing failure to provide suitable and adequate treatment of one involuntarily committed after insanity acquittal cannot be justified by lack of staff or facilities. *Rouse v. Cameron*, 373 F.2d 451 (D.C. Cir. 1966).

Purpose of requirement that hospital superintendent certify that person seeking release has recovered sanity is to safeguard public against release of insane criminals who might possibly repeat their depredations. *O'Beirne v. Overholser*, 180 F. Supp. 572 (D.D.C.), rev'd on other grounds, 287 F.2d 133 (D.C. Cir. 1960).

Court may not authorize release unless hospital superintendent certifies that person confined has recovered his sanity. *O'Beirne v. Overholser*, 180 F. Supp. 572 (D.D.C.), rev'd on other grounds, 287 F.2d 133 (D.C. Cir. 1960).

A person found not guilty of criminal offense on ground of insanity may not be released unless superintendent of hospital to which he has been committed certifies that person committed has recovered his sanity, and that, in superintendent's opinion, the person will not in reasonably foreseeable future be dangerous to himself or others and is entitled to an unconditional release. *Robertson v. Cameron*, 224 F. Supp. 60 (D.D.C. 1963).

Court may not substitute its own judgment for that of superintendent of mental hospital, but superintendent's action or failure to act may not be deemed final or conclusive for all purposes. *O'Beirne v. Overholser*, 193 F. Supp. 652 (D.D.C.), rev'd on other grounds, 302 F.2d 852 (D.C. Cir. 1961).

Court's authority to dictate a particular treatment regimen. — The District of Columbia Superior Court does not have the authority to instruct Saint Elizabeth's Hospital to follow a particular treatment regimen prior to the hospital's certification to the Court for conditional or unconditional release of an acquittee. *United States v. Wise*, 120 WLR 85 (Super. Ct. 1992).

Section places primary responsibility upon trial court, not the doctors, to balance the competing interests of the acquittee's liberty and the community's safety. The fulcrum of this balance is the court's determination of the acquittee's dangerousness vel non in the reasonable future under the proposed conditions of

release. *DeVeau v. United States*, App. D.C., 483 A.2d 307 (1984); *United States v. Gallo*, 117 WLR 2081 (Super. Ct. 1989).

Trial court may reject unanimous expert opinion on dangerousness. — If the trial court has reason to reject the opinions of the experts on the issue of dangerousness, it may do so even though they are unanimous. *DeVeau v. United States*, App. D.C., 483 A.2d 307 (1984).

Petitioner must show arbitrary withholding of certificate of recovered sanity. — It is necessary for a habeas corpus petitioner to show not only that he has recovered his sanity but also that the superintendent of a hospital is arbitrarily and capriciously withholding the certificate of recovered sanity. *O'Beirne v. Overholser*, 180 F. Supp. 572 (D.D.C.), rev'd on other grounds, 287 F.2d 133 (D.C. Cir. 1960).

Such refusal must lack reasonable basis. — To be arbitrary or capricious, the refusal of the superintendent of a hospital to certify that the person committed is entitled to unconditional release must be without a reasonable or rational basis, but it need not be made in bad faith. *Robertson v. Cameron*, 224 F. Supp. 60 (D.D.C. 1963).

Superintendent of hospital may not act according to his personal notion or whim, no matter how well intentioned or bona fide his action may be, in determining whether a person committed has recovered his sanity and is entitled to an unconditional release. *Robertson v. Cameron*, 224 F. Supp. 60 (D.D.C. 1963).

Function of District Court reviewing internal hospital administration. — When a District Court reviews the medical judgment of a hospital staff on a question of internal administration, its function resembles that on an appellate court when it reviews agency action and, in deference to medical expertise, the hospital should be allowed to operate within a broad range of discretion. *United States v. Ecker*, 543 F.2d 178 (D.C. Cir. 1976), cert. denied, 429 U.S. 1063, 97 S. Ct. 788, 50 L. Ed. 2d 779 (1977).

Judicial review of hospital decision did not deny due process. — Exercise of trial judge's statutory, broad power of review over decision of hospital, to which patient had been committed following his acquittal by reason of insanity, to release him conditionally did not deny patient equal protection. *United States v. Ecker*, 479 F.2d 1206 (D.C. Cir. 1973).

Habeas corpus hearing is de novo proceeding to examine petitioner's existing mental condition, and at such hearing he is free to put in evidence, both lay and expert, to demonstrate that he has recovered to the point where he will not be dangerous to himself or others. *Ragsdale v. Overholser*, 281 F.2d 943

(D.C. Cir. 1960), modified on other grounds, *Bolton v. Harris*, 395 F.2d 642 (D.C. Cir. 1968).

Habeas corpus petition not subject to dismissal. — When a mental hospital patient's habeas corpus petition for release from mental hospital is based on his mental health at time petition was filed, the petition is not subject to dismissal on grounds that the merits of his claim had been determined in prior proceedings or that failure to present the issues in prior proceedings amounted to inexcusable neglect. *Dixon v. Jacobs*, 427 F.2d 589 (D.C. Cir. 1970), overruled on other grounds, *United States v. Ecker*, 543 F.2d 178 (D.C. Cir. 1976).

Medical examination an administrative remedy that must be exhausted. — The administrative remedy for mental patient that must be exhausted prior to petition for habeas corpus is the medical examination, rather than request for examination, and if the examination has been conducted within 6 months prior to habeas corpus petition, the administrative remedy is exhausted. *Dixon v. Jacobs*, 427 F.2d 589 (D.C. Cir. 1970), overruled on other grounds, *United States v. Ecker*, 543 F.2d 178 (D.C. Cir. 1976).

Action on habeas corpus petition deferred during medical examination. — If a mental patient is undergoing medical examination at the time his petition for habeas corpus is filed, the district court should defer action on the petition pending mental hospital's completion of the examination and if, after completion, the patient desires to continue with his petition, the district court should proceed to determination of the issues. *Dixon v. Jacobs*, 427 F.2d 589 (D.C. Cir. 1970), overruled on other grounds, *United States v. Ecker*, 543 F.2d 178 (D.C. Cir. 1976).

Consideration of evidence by District Court. — The District Court, in denying a writ of habeas corpus, is permitted to choose between expert evidence that the petitioner is dangerous and other evidence, including testimony of laymen, tending to suggest that he is not. *Ragsdale v. Overholser*, 281 F.2d 943 (D.C. Cir. 1960), modified on other grounds, *Bolton v. Harris*, 395 F.2d 642 (D.C. Cir. 1968).

Certificate of superintendent of mental institution in form of conclusion may be disregarded by the district judge if it is not supported by medical recitals which satisfy or persuade him that the conclusion is correct. *Ragsdale v. Overholser*, 281 F.2d 943 (D.C. Cir. 1960), overruled on other grounds, *Bolton v. Harris*, 395 F.2d 642 (D.C. Cir. 1968), superseded by statute on other grounds, *United States v. Cohen*, 733 F.2d 128 (D.C. Cir.), *DeVeau v. United States*, App. D.C., 483 A.2d 307 (1984).

Court in habeas corpus proceeding would not look behind record. — In a habeas corpus proceeding brought by patient of

hospital for the mentally ill, court would not go behind the record to determine whether the patient had had an opportunity to present his defense in the trial court prosecution in which he had been found not guilty by reason of insanity at time offense was committed. *O'Beirne v. Overholser*, 180 F. Supp. 572 (D.D.C.), rev'd on other grounds, 287 F.2d 133 (D.C. Cir. 1960).

Testimony by members of Commission on Mental Health. — All indigent inmates who petition for habeas corpus for release from confinement in a hospital, including those committed as insane prisoners, may demand expert testimony of members of Commission on Mental Health, or court on its own motion may require it. *Curry v. Overholser*, 287 F.2d 137 (D.C. Cir. 1960).

Effect of escape from hospital on habeas corpus case. — As long as there was an outstanding order of restraint on the liberty of a petitioner and as long as her custodians were within the jurisdiction of the Court of Appeals, a habeas corpus case involving the propriety of committing the petitioner to the hospital was not moot, and could not be dismissed on the ground that the petitioner who had escaped from the hospital was not in custody for habeas corpus purposes. *Cameron v. Mullen*, 387 F.2d 193 (D.C. Cir. 1967).

Court order for temporary leave. — Where hospital authorities have decided that a patient committed to the hospital after acquittal by reason of insanity has reached stage where temporary leave from hospital is necessary and proper, authorities should certify that fact to District Court and obtain an appropriate order. *Hough v. United States*, 271 F.2d 458 (D.C. Cir. 1959).

That patient fears that his release from mental institution will endanger himself or community to which he is being released may be considered on issue of release and determination is reviewable on appeal. *Green v. United States*, 349 F.2d 203 (D.C. Cir. 1965).

Remission of psychosis did not warrant unconditional release. — In habeas corpus proceeding seeking unconditional release from mental institution to which petitioner had been committed after acquittal on ground of insanity, return to writ of habeas corpus filed on behalf of superintendent of mental hospital stating that psychosis from which petitioner was suffering was in remission since his readmission to hospital on a certain date did not warrant granting of petitioner's unconditional release from hospital. *In re Rosenfield*, 157 F. Supp. 18 (D.D.C. 1957).

Revocation of conditional release. — An order for the conditional release of a defendant who had been committed to mental hospital on acquittal of offense by reason of insanity could be revoked only by court which granted condi-

tional release and only after full hearing. *Darnell v. Cameron*, 348 F.2d 64 (D.C. Cir. 1965).

Noncompliance with conditions of release from hospital by patient who had been committed there after having been found not guilty by reason of insanity was significant but was not the sole or ultimate consideration in determining whether to revoke conditional release; findings as to his mental condition and dangerousness were required. *Friend v. United States*, 388 F.2d 579 (D.C. Cir. 1967).

Where, at hearing to revoke patient's conditional release, positive expert medical opinion was presented that patient had not recovered and would be dangerous to himself and others if released, patient was not entitled to be released. *United States v. Charnizon*, App. D.C., 232 A.2d 586 (1967).

Where the acquittee was moving for conditional release pursuant to subsection (k), but failed to meet the conditions of his release, the court had a fully adequate basis for revoking the conditional release and was not required to make a finding of dangerousness. *United States v. Lightfoot*, 119 WLR 1845 (Super. Ct. 1991).

Where the court had earlier concluded that release could be granted only upon compliance with certain conditions, it follows that a violation of those very conditions provides a complete and sufficient basis for revocation. *United States v. Lightfoot*, 119 WLR 1845 (Super. Ct. 1991).

District Court review of conditional release. — When a District Court is asked to review the conditional release certification of a person who has been acquitted on grounds of mental illness and confined to hospital for the mentally ill, the court must decide whether the proposed release affords reasonable assurances for the public safety. *United States v. Ecker*, 543 F.2d 178 (D.C. Cir. 1976), cert. denied, 429 U.S. 1063, 97 S. Ct. 788, 50 L. Ed. 2d 779 (1977).

Effect of doctors' testimony on inmate's right to due process. — Where the doctors who testified at habeas corpus proceeding were among those whom he had called as witnesses in his own behalf at criminal trial and were thoroughly familiar with his history and behavior at hospital, and inmate did not request testimony of members of Commission on Mental Health, although private psychiatrists were not available to testify as to inmate's mental condition at time of proceeding, inmate received due process of law. *Curry v. Overholser*, 287 F.2d 137 (D.C. Cir. 1960).

Affirmance of judgment denying writ of habeas corpus to one who had been committed to hospital pursuant to statute following verdict of not guilty by reason of insanity was without prejudice to filing of new petition for writ. *Miller v. Cameron*, 335 F.2d 986 (D.C. Cir. 1964).

Facts did not entitle petitioner to independent examination. — In habeas corpus proceeding brought by a petitioner who had been committed after being found not guilty of criminal charge by reason of insanity who alleged that he was receiving no individual psychotherapy at hospital and that no further institutional care was necessary, petitioner was not, on facts disclosed, entitled to independent examination by member of mental health commission. *Hayward v. Overholser*, 191 F. Supp. 464 (D.D.C. 1960).

Inmate entitled to independent examination. — An inmate who had been confined for more than 1 year without an independent examination as to his mental health by an expert appointed by the District Court was entitled, in connection with his petition for release, as a matter of right, to such independent examination to test findings and conclusions of the hospital staff where he was confined. *Watson v. Cameron*, 312 F.2d 878 (D.C. Cir. 1962).

Superintendent's assertion that inmate had not recovered insufficient. — A mental hospital superintendent's return in habeas corpus proceeding by inmate, asserting generally that inmate had not recovered from "abnormal mental condition" and required further treatment, without explaining quoted phrase or describing past or future treatment, was insufficient on its face. *O'Beirne v. Overholser*, 193 F. Supp. 652 (D.D.C.), rev'd on other grounds, 302 F.2d 852 (D.C. Cir. 1961).

Evidence insufficient to warrant release. — In a habeas corpus proceeding where the superintendent of the hospital had refused to certify that the petitioner had recovered his sanity and would not in the reasonable future be dangerous to himself or others, evidence did not warrant release of the petitioner despite the opinion of 2 psychiatrists denying present mental disease, where 7 psychiatrists agreed that the petitioner was a sociopathic personality with a dyssocial outlook and would be dangerous to the community if released. *Overholser v. Leach*, 257 F.2d 667 (D.C. Cir. 1958), cert. denied, 359 U.S. 1013, 79 S. Ct. 1152, 3 L. Ed. 2d 1038 (1959).

Evidence supported finding of petitioner's dangerousness. — Evidence that the petitioner was suffering from a mental illness of psychotic proportions, that he was daily administered a tranquilizing drug and that if medicine were discontinued petitioner would resort to alcohol supported finding that petitioner would be dangerous to himself or others if released. *Collins v. Cameron*, 377 F.2d 945 (D.C. Cir. 1967).

Evidence sufficient to support denial of conditional release. — Evidence concerning extremely short period of time during which patient had been without medication, his inner

turmoil still reflected by psychological testing, and his escape from the hospital shortly after being told to assume a great deal of responsibility for his own future raised sufficient questions about the patient's mental stability and adequacy of the hospital's investigation into his mental status to support trial judge's denial of conditional release which had been recommended by the hospital. *United States v. Ecker*, 479 F.2d 1206 (D.C. Cir. 1973).

Evidence that a patient in a mental hospital who had been acquitted on charges of murder and rape because of mental illness was still suffering from chronic mental illness, that his fantasy life which was observed on initial commitment had continued, and that the patient had been reprimanded for improperly touching a female patient on the buttocks and for seeking out female patients in the deaf program is sufficient to sustain finding that patient is likely to pose a danger to himself or others if the conditional release sought for him were granted. *United States v. Ecker*, 543 F.2d 178 (D.C. Cir. 1976), cert. denied, 429 U.S. 1063, 97 S. Ct. 788, 50 L. Ed. 2d 779 (1977).

Competency determination for alleged offense committed after escape. — The determination of competency to stand trial for a subsequent offense, allegedly committed after a mandatorily committed acquittee's escape from the mental hospital, does not render moot issue that he is eligible for release from hospital. *Harris v. United States*, App. D.C., 356 A.2d 630 (1976).

Issue of fact of accused's sanity required hearing. — Where a petition for writ of habeas corpus contained the crucial statement that petitioner was of sound mind and the acting superintendent of the hospital alleged that accused was of unsound mind, giving details of asserted malady and opinion that accused was not mentally competent to stand trial, an issue of fact as to whether accused had regained his sanity was presented, petitioner was entitled to hearing thereon. *Lewis v. Overholser*, 274 F.2d 592 (D.C. Cir. 1960).

A habeas corpus petition filed by one who was confined to hospital following acquittal by reason of insanity, alleging that he was free from named mental conditions, of sound mind and not dangerous to himself or society, together with return, presented question of fact requiring resolution in a hearing, assuming it was not raised in untimely fashion. *Whittaker v. Overholser*, 299 F.2d 447 (D.C. Cir. 1962).

Hearing on habeas corpus petition not necessary. — Where petitioner was committed to a hospital after acquittal by reason of insanity and his petition for habeas corpus failed to allege that he would not in the reasonable future be dangerous to himself or others and the hospital superintendent stated that he could not certify that the petitioner had recov-

ered, the district judge properly concluded that a hearing was not necessary. *Fielding v. Overholser*, 268 F.2d 898 (D.C. Cir. 1959).

§ 24-302. Commitment while serving sentence.

Any person while serving sentence of any court of the District of Columbia for crime, in a District of Columbia penal institution, and who, in the opinion of the Director of the Department of Corrections of the District of Columbia, is mentally ill, shall be referred by such Director to the psychiatrist functioning under § 24-106, and if such psychiatrist certifies that the person is mentally ill, this shall be sufficient to authorize the Director to transfer such person to a hospital for the mentally ill to receive care and treatment during the continuance of his mental illness. (Mar. 3, 1901, 31 Stat. 1340, ch. 854, § 928; Aug. 9, 1955, 69 Stat. 611, ch. 673, § 2; 1973 Ed., § 24-302.)

Cross references. — As to representation of indigents, see § 11-2601.

Section references. — This section is referred to in § 11-2601.

Section does not relieve bench and bar of presentence responsibility. — The existence of possibilities to protect society from and to treat a prisoner of unsound mind or otherwise defective during imprisonment does not relieve bench and bar of the responsibility of endeavoring to reach at the earliest possible stage, ideally prior to trial and sentence, the approach to a particular case which appears to be most just and appropriate, having regard to the individual's mental condition, his history, and the possibility of rehabilitating him and restoring him to usefulness in the community. *Carter v. United States*, 283 F.2d 200 (D.C. Cir. 1960).

Transfer to hospital following sentence. — If an accused who pleads guilty is found to be in need of psychiatric assistance, he may be transferred to hospital for mentally ill following sentence. *Lynch v. Overholser*, 369 U.S. 705, 82 S. Ct. 1063, 8 L. Ed. 2d 211 (1962), superseded in part by statute, *United States v. Mendelsohn*, App. D.C., 443 A.2d 1311 (1982).

Rights of prisoner before involuntary transfer. — A prisoner is entitled to notice, a judicial hearing, and, if requested, a jury trial before he can be involuntarily transferred. In re *Hurt*, App. D.C., 437 A.2d 590 (1981).

Violation of due process. — The involuntary transfer of a prisoner to a mental hospital without notice and an adversary hearing is a violation of the due process clause of the Four-

teenth Amendment. In re *Hurt*, App. D.C., 437 A.2d 590 (1981).

Effect of affirmation of conviction. — The fact that a conviction is affirmed does not foreclose the possibility of further inquiry as to whether a sentence should be served in a penitentiary or in a mental hospital. *Williams v. United States*, 312 F.2d 862 (D.C. Cir. 1962), cert. denied, 374 U.S. 841, 83 S. Ct. 1894, 10 L. Ed. 2d 1061 (1963), cert. denied, 379 U.S. 982, 85 S. Ct. 689, 13 L. Ed. 2d 572 (1965).

Prisoner has same rights as one subject to civil commitment. — Under this section, before a prisoner may be involuntarily transferred he is entitled to a judicial hearing, jury trial, and the same rights of notice, counsel and cross-examination as are provided for in Chapter 5 of Title 21, and the same procedures for release from the hospital as are embodied in that Chapter. *Matthews v. Hardy*, 420 F.2d 607 (D.C. Cir. 1969), cert. denied, 397 U.S. 1010, 90 S. Ct. 1231, 25 L. Ed. 2d 423 (1970).

Sentence and refusal to commit not cruel and unusual punishment. — Sentence of 10 years' imprisonment, and refusal to commit defendant to institution for treatment of sexual psychopathy, did not constitute cruel and unusual punishment of defendant after conviction of sodomy and assault with dangerous weapon. *Hughes v. United States*, App. D.C., 308 A.2d 238 (1973).

Cited in *Hopkins v. United States*, 318 F.2d 186 (D.C. Cir. 1963); *Campbell v. McGruder*, 580 F.2d 521 (D.C. Cir. 1978); *Teasley v. United States*, 662 F.2d 787 (D.C. Cir. 1980).

§ 24-303. Restoration to sanity.

(a) When any person confined in a hospital for the mentally ill, charged with crime and subject to be tried therefor, shall be found competent to stand trial in the opinion of the superintendent of such hospital, the superintendent shall certify such fact to the clerk of the court in which the indictment, information,

or charge is pending, in accordance with the procedure specified in § 24-301, and deliver such person to the court according to its proper precept.

(b) When any person confined in a hospital for the mentally ill while serving sentence shall be restored to mental health within the opinion of the superintendent of the hospital, the superintendent shall certify such fact to the Director of the Department of Corrections of the District of Columbia and such certification shall be sufficient to deliver such person to such Director according to his request. (Mar. 3, 1901, 31 Stat. 1340, ch. 854, § 929; Aug. 9, 1955, 69 Stat. 611, ch. 673, § 3; 1973 Ed., § 24-303.)

Effect of subchapter. — The sole effect of this subchapter is to suspend criminal proceedings during the period of an accused's insanity but jurisdiction of the court continues and when sanity is restored, the case may proceed as if the interregnum had not occurred. *Haislip v. United States*, 129 F.2d 53 (D.C. Cir. 1942).

"Restoration to health." — Subsection (b) of this section permits the superintendent to certify a prisoner as having been "restored to health," where the prisoner's illness is in a state of remission following a sustained program of treatment. *In re Hurt*, App. D.C., 437 A.2d 590 (1981).

Effect of superintendent's certificate. — A determination of incompetency is a legal determination that an accused is not then mentally qualified to stand trial, but a hospital superintendent's certificate of restored sanity removes the previous bar. *Haislip v. United States*, 129 F.2d 53 (D.C. Cir. 1942).

Trial on suspended criminal indictment. — Where an accused was found to be of unsound mind and was committed to a hospital, upon his discharge from the hospital as cured and in the absence of anything showing inval-

idity of the certificate of the hospital superintendent, the court was required to proceed with trial on the suspended criminal indictment and no further proceedings on the question of sanity were necessary. *Haislip v. United States*, 129 F.2d 53 (D.C. Cir. 1942).

Prisoner's right to judicial inquiry. — Nothing in this section precludes the right of a prisoner to have a judicial inquiry made into the fact of restoration of sanity. *Wagner v. White*, 38 App. D.C. 554 (1912).

Judicially mandated hearing before transferring prisoner from St. Elizabeths Hospital to Department of Corrections is a review of the equivalent of "agency action," and the appropriate inquiry is whether the decision was arbitrary, capricious, an abuse of discretion or without substantial evidence to support it. *In re Hurt*, App. D.C., 437 A.2d 590 (1981).

Cited in *Orencia v. Overholser*, 163 F.2d 763 (D.C. Cir. 1947); *Green v. United States*, 351 F.2d 198 (D.C. Cir. 1965); *Matthews v. Hardy*, 420 F.2d 607 (D.C. Cir. 1969), cert. denied, 397 U.S. 1010, 90 S. Ct. 1231, 25 L. Ed. 2d 423 (1970).

PRISONERS AND THEIR TREATMENT

CHAPTER 4. PRISONS AND PRISONERS.

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- 24-402. Imprisonment for more than 1 year; jurisdiction over Reformatory prisoners; transfer from penitentiary to Reformatory.
- 24-403. Transfer from Jail to Workhouse.
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*Subchapter I. Prisons.***§ 24-401. Place of imprisonment; cumulative sentences; jurisdiction of prosecutions.**

Repealed. Dec. 23, 1963, 77 Stat. 623, Pub. L. 88-241, § 21.

§ 24-402. Imprisonment for more than 1 year; jurisdiction over Reformatory prisoners; transfer from penitentiary to Reformatory.

Whenever any person has been convicted of crime in any court in the District of Columbia and sentenced to imprisonment for more than 1 year by the court, the imprisonment during the term for which he may have been sentenced or during the residue of said term may be in some suitable jail, or penitentiary, or in the Reformatory of the District of Columbia; and it shall be sufficient for the court to sentence the defendant to imprisonment in the penitentiary without specifying the particular prison or the Reformatory of the District of Columbia and the imprisonment shall be in such penitentiary, jail, or the Reformatory of the District of Columbia as the Attorney General shall from time to time designate; provided, that the Mayor of the District of Columbia is vested with jurisdiction over such male and female prisoners as may be designated by the Attorney General for confinement in the Reformatory of the District of Columbia from the time they are delivered into his custody or into the custody of his authorized Superintendent, deputy, or deputies, and until such prisoners are released or discharged under due process of law; and provided further, that the residue of the term of imprisonment of any person who has prior to July 1, 1916, been convicted of crime in any court in the District of Columbia and sentenced to imprisonment for more than 1 year by the court may be in the Reformatory of the District of Columbia instead of the penitentiary where such persons may be confined on July 1, 1916, and the Attorney General, when so requested by the Mayor of the District of Columbia, is authorized to, and he shall, deliver into the custody of the Superintendent of said Reformatory or his deputy or deputies any such person confined in any penitentiary in pursuance of any judgment of conviction in and sentence by any court in the District of Columbia, and the Mayor of the District of Columbia is vested with jurisdiction over such prisoners from the time they are delivered into the custody of said Superintendent or his duly authorized deputy or deputies, including the time when they are in transit between such penitentiary and the Reformatory of the District of Columbia, and during the period they are in such Reformatory or until they are released or discharged under due process of law. The Attorney General shall pay the cost of the maintenance of said prisoners so transferred, said payment to be from appropriations for support of convicts, District of Columbia, in like manner as payments are made for the support of District convicts in federal penitentiaries. Nothing herein contained shall be construed as applying to the National Training School for Boys or the National Training School for Girls. (Sept. 1, 1916, 39 Stat. 711, ch. 433; 1973 Ed., § 24-402.)

Cross references. — As to designation of place of imprisonment by Attorney General, see § 24-425.

As to rewards for apprehension of prison fugitives, see § 24-426.

References in text. — The National Training School for Boys, referred to in the last sentence of this section, was closed pursuant to an order of the Attorney General, dated May 15, 1968.

The National Training School for Girls, referred to in the last sentence of this section, was terminated by the Act of August 3, 1951, 65 Stat. 154, ch. 291, § 1, which provided that no new commitments to the School should be made after August 3, 1951.

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

Housing of locally convicted prisoners. — Section 24-425, in conjunction with § 24-410 and this section, imposes primary responsibility upon the District of Columbia for housing locally convicted prisoners. *United States v. District of Columbia*, 897 F.2d 1152 (D.C. Cir. 1990).

General authority of Attorney General. — In the District of Columbia, persons convicted of crimes and sentenced to terms of imprisonment in excess of one year are committed to the custody of the Attorney General who may designate a suitable jail or penitentiary for the sentence. *Millard v. Roach*, App. D.C., 631 A.2d 1217 (1993).

The transfer power of the Attorney General is not limited to District and federal facilities. *Vaughn v. United States*, App. D.C., 579 A.2d 170 (1990).

Regulation and discipline of prisoners convicted of offenses against United States has been committed to prison authori-

ties. *Fulwood v. Clemmer*, 206 F. Supp. 370 (D.D.C. 1962).

Incarceration of District prisoners in federal institutions. — This section impliedly recognizes the fact that District of Columbia prisoners may be incarcerated in federal institutions. *Story v. Rives*, 97 F.2d 182 (D.C. Cir.), cert. denied, 305 U.S. 595, 59 S. Ct. 71, 83 L. Ed. 377 (1938).

Incarceration outside District. — Although it was inconvenient to the female plaintiffs and their families, they did not have a justifiable expectation that the plaintiffs would be incarcerated in a facility in the District of Columbia or its metropolitan area, and neither their statutory nor their constitutional rights were violated by their incarceration outside the District of Columbia. *Pitts v. Meese*, 684 F. Supp. 303 (D.D.C. 1987), aff'd sub nom. *Pitts v. Thornburgh*, 866 F.2d 1450 (D.C. Cir. 1989).

Attorney General's authority under United States Code. — Sections 4082 and 4083 of Title 18 of the United States Code if in any respect inconsistent with this section are so only to the extent that it broadens the Attorney General's authority so that he may designate a place of confinement other than one of the District of Columbia. *Beard v. Bennett*, 114 F.2d 578 (D.C. Cir. 1940).

Attorney General has authority to regulate furlough program at Lorton Reformatory despite passage of the District of Columbia Court Reform and Criminal Procedure Act and District of Columbia Self-Government and Governmental Reorganization Act, and therefore has the authority to issue order which curtailed furlough privileges previously available to certain inmates at Lorton. *Milhouse v. Levi*, 548 F.2d 357 (D.C. Cir. 1976).

Attorney General's order denying furlough eligibility to persons in Lorton Reformatory convicted prior to order is not prohibited by ex post facto clause of Constitution. *Milhouse v. Levi*, 548 F.2d 357 (D.C. Cir. 1976).

Place of confinement for conviction under § 22-1504. — The Attorney General of the United States has the authority to designate an institution located outside of the District of Columbia and beyond the control of local penal officials for service of sentence by one who was convicted in the District of Columbia of a violation of § 22-1504, since the offense punished thereby was an "offense against the United States" within meaning of this section. *Beard v. Bennett*, 114 F.2d 578 (D.C. Cir. 1940).

Cited in *Cannon v. United States*, 645 F.2d 1128 (D.C. Cir. 1981); *United States v. District of Columbia*, 703 F. Supp. 982 (D.D.C. 1988), aff'd as modified, 897 F.2d 1152 (D.C. Cir. 1990); *Lee v. Thornburgh*, 877 F.2d 1053 (D.C. Cir. 1989).

§ 24-403. Transfer from Jail to Workhouse.

The United States District Court for the District of Columbia, Superior Court of the District of Columbia, the Attorney General, and the Superintendent of the Washington Asylum and Jail, when so requested by the Mayor of the District of Columbia, shall deliver into the custody of the Superintendent or the authorized deputy or deputies of said Superintendent of the Workhouse, male and female prisoners sentenced to confinement in said Jail for offenses against the common law or against statutes or ordinances relating to the District of Columbia, and, in the discretion of the United States District Court for the District of Columbia, Superior Court of the District of Columbia, and the Attorney General, male and female prisoners serving sentence in said Jail for offenses against the United States, for such work or services as may be necessary, in the discretion of the Mayor of said District, in connection with the construction, maintenance, and operation of said Workhouse, or the prosecution of any other public work at said institution or in the District of Columbia; provided, that, on the direction of said Mayor, male and female prisoners confined in any existing workhouse existing on March 2, 1911, or in the Washington Asylum and Jail of the District of Columbia shall be delivered into the custody of said Superintendent or the authorized deputy or deputies of said Superintendent aforesaid, to perform similar work or services to those hereinbefore required of male and female prisoners serving sentences in the District of Columbia Jail; provided further, that, the Mayor of the District of Columbia is hereby vested with jurisdiction over such male and female prisoners from the time they are so delivered into the custody of said Superintendent or the duly authorized deputy or deputies of said Superintendent, including the time when such prisoners are in transit between the District of Columbia and the site acquired for such Workhouse, and during the period such prisoners are on such site or in the District of Columbia until they are released or discharged under due process of law. (Mar. 2, 1911, 36 Stat. 1002, ch. 192; June 25, 1936, 49 Stat. 1921, ch. 804; June 25, 1948, 62 Stat. 991, ch. 646, § 32(b); May 24, 1949, 63 Stat. 107, ch. 139, § 127; July 29, 1970, 84 Stat. 590, Pub. L. 91-358, title I, § 171; 1973 Ed., § 24-403.)

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat.

818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

Cited in *Sanders v. Allen*, 100 F.2d 717 (D.C. Cir. 1938).

§ 24-404. Commutation of fine.

In all cases in the District of Columbia where a defendant is sent to jail or to the Workhouse in default of the payment of a fine he shall be released upon the payment of the balance of the fine due by him after crediting thereon as paid an amount equal to the proportion the time thus served by him in the Jail or Workhouse bears to the whole time he was to serve under the sentence. (Mar. 3, 1901, 31 Stat. 1341, ch. 854, § 936; 1973 Ed., § 24-404.)

§ 24-405. Good conduct deduction.

Repealed. Apr. 11, 1987, D.C. Law 6-218, § 9, 34 DCR 484.

Legislative history of Law 6-218. — See note to § 24-429.

§ 24-406. Release in District.

All inmates of the Workhouse and Reformatory for the District of Columbia shall be returned to and released in said District on the day of the expiration of sentence. (June 10, 1910, 36 Stat. 464, ch. 282; 1973 Ed., § 24-406.)

§ 24-407. Jail and Washington Asylum combined.

The Jail of the District of Columbia and the Washington Asylum of said District shall be combined as 1 institution, known as the Washington Asylum and Jail. (Mar. 2, 1911, 36 Stat. 1003, ch. 192; 1973 Ed., § 24-407.)

Cited in *Toy v. District of Columbia*, App. D.C., 549 A.2d 1 (1988).

§ 24-408. Commitments to Washington Asylum and Jail.

Whenever and wherever authority of law exists to sentence, commit, order committed, or confine any person to or in the Jail of the District of Columbia or the Washington Asylum of said District, said authority shall be exercised by sentence, commitment, order of commitment, or confinement to or in said Washington Asylum and Jail. (Mar. 2, 1911, 36 Stat. 1003, ch. 192; 1973 Ed., § 24-408.)

§ 24-409. Board of Public Welfare to have exclusive management and control of Workhouse, Reformatory, and Washington Asylum and Jail.

Omitted.

§ 24-410. Detention of United States prisoners in Washington Asylum and Jail.

The Department of Corrections is hereby authorized and directed to receive and keep in the Washington Asylum and Jail all prisoners committed thereto

for offenses against the United States. (Mar. 2, 1911, 36 Stat. 1003, ch. 192; 1973 Ed., § 24-410.)

References in text. — “Department of Corrections” was substituted for “Board of Public Welfare” pursuant to § 24-443.

Housing of locally convicted prisoners. — Section 24-425, in conjunction with § 24-402

and this section, imposes primary responsibility upon the District of Columbia for housing locally convicted prisoners. *United States v. District of Columbia*, 897 F.2d 1152 (D.C. Cir. 1990).

§ 24-411. Appointment and supervision of prison personnel.

The superintendents and all other employees engaged on March 16, 1926, in the operation of the Workhouse at Occoquan in the State of Virginia, the Reformatory at Lorton in the State of Virginia, and the Washington Asylum and Jail shall after March 16, 1926, be subject to the supervision of the Department of Corrections. Each superintendent shall have the management and control of the institution to which he is appointed and shall be subordinate to the Director of the Department of Corrections. The superintendent and all other employees of each of the institutions enumerated in this section shall be appointed by the Mayor of the District of Columbia upon nomination by the Department of Corrections and shall be subject to discharge by the Mayor upon recommendation of the Department of Corrections. (Mar. 16, 1926, 44 Stat. 209, ch. 58, § 7; 1973 Ed., § 24-411.)

References in text. — “Department of Corrections” was substituted for “Board of Public Welfare” pursuant to § 24-443.

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia.

These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

Superintendent of jail as officer and employee of United States. — The Superintendent of the District of Columbia jail, insofar as he was custodian of a federal prisoner, was an “officer or employee of the United States” within the meaning of 28 U.S.C. § 1252. *Reid v. Covert*, 351 U.S. 487, 76 S. Ct. 880, 100 L. Ed. 1352 (1956), rev’d on other grounds, 354 U.S. 1, 77 S. Ct. 1222, 1 L. Ed. 2d 1148 (1957).

Cited in *Smith-Bey v. District of Columbia*, 546 F. Supp. 813 (D.D.C. 1982).

§ 24-412. Employment of prisoners.

Persons sentenced to imprisonment in the Jail may be employed at such labor and under such regulations as may be prescribed by the Council of the District of Columbia and the proceeds thereof applied to defray the expenses of the trial and conviction of any such person. (Mar. 3, 1901, 31 Stat. 1379, ch. 854, § 1192; Mar. 16, 1926, 44 Stat. 209, ch. 58, § 6; 1973 Ed., § 24-412.)

Section references. — This section is referred to in §§ 24-413 and 24-421.

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 402(211) of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to the District of Columbia Council, subject to the right of the Commis-

sioner as provided in § 406 of the Plan. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

§ 24-413. Commitment by Marshal.

Nothing in §§ 24-412 and 24-415 shall be construed to impair or interfere with the authority of the Marshal of the District to commit persons to the Jail or to produce them in open court or before any judicial officer when thereto required. (Mar. 3, 1901, 31 Stat. 1379, ch. 854, § 1193; 1973 Ed., § 24-413.)

Section references. — This section is referred to in §§ 24-414 and 24-421.

§ 24-414. Delivery of prisoners to Marshal.

It shall be the duty of the Superintendent of the Washington Asylum and Jail to receive such prisoners and to deliver them to the Marshal or his duly authorized deputy, on the written request of either, for the purpose of taking them before any court or judicial officer, as provided in § 24-413. (Mar. 3, 1901, 31 Stat. 1379, ch. 854, § 1194; Mar. 2, 1911, 36 Stat. 1003, ch. 192; 1973 Ed., § 24-414.)

Section references. — This section is referred to in § 24-421.

Cited in *Tyler v. United States*, 193 F.2d 24

(D.C. Cir. 1951), cert. denied, 343 U.S. 908, 72 S. Ct. 639, 96 L. Ed. 1326 (1952).

§ 24-415. Accountability for safekeeping of prisoners.

The Superintendent of the Washington Asylum and Jail shall be accountable for the safekeeping of all prisoners legally committed thereto. (Mar. 3, 1901, 31 Stat. 1379, ch. 854, § 1191; Mar. 2, 1911, 36 Stat. 1003, ch. 192; Mar. 16, 1926, 44 Stat. 209, ch. 58, § 6; 1973 Ed., § 24-415.)

Section references. — This section is referred to in §§ 24-413 and 24-421.

Superintendent's bond. — The bond of the Superintendent of the Washington Asylum and Jail is required to be given to the District, and there is no statutory provision that allows ac-

tion thereon to be brought by a third party. *District of Columbia ex rel. Langellotti v. Fidelity & Deposit Co.*, 271 F. 383 (D.C. Cir. 1921).

Cited in *Zinkhan v. District of Columbia*, 271 F. 542 (D.C. Cir. 1921).

§ 24-416. Annual report by Superintendent.

The Superintendent of the Washington Asylum and Jail shall annually, in the month of November, make a detailed report to the Attorney General. (Mar. 3, 1901, 31 Stat. 1379, ch. 854, § 1197; Mar. 2, 1911, 36 Stat. 1003, ch. 192; 1973 Ed., § 24-416.)

Section references. — This section is referred to in § 24-421.

§ 24-417. Execution of judgments in capital cases; failure to make specific appropriation not abolition of position.

The Superintendent of the Washington Asylum and Jail appointed by the Mayor of the District of Columbia is hereby directed, authorized, and required to execute the judgments of the law prior to March 4, 1923, pronounced and thereafter to be pronounced in the District of Columbia by the courts thereof in all capital cases, and the power prior to March 4, 1923, given to and now vested in such Mayor to appoint such Superintendent and all appointments to the position of such Superintendent made by such Mayor are hereby ratified and confirmed; and any failure on the part of Congress, either prior to or after March 4, 1923, to make a specific appropriation for the salary or compensation of such Superintendent shall not be construed either as an abolition of such position of Superintendent of the Washington Asylum and Jail or as a repeal of the power and authority of such Mayor to appoint such Superintendent. (Mar. 4, 1923, 42 Stat. 1533, ch. 292; 1973 Ed., § 24-417.)

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and

Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

§ 24-418. Sale of products of Workhouse and Reformatory.

The Mayor of the District of Columbia is authorized, under such regulations as the Council of the District of Columbia may prescribe, to sell the surplus products of the Workhouse and the Reformatory. All moneys derived from such sales shall be paid into the Treasury of the United States to the credit of the General Fund of the District of Columbia. All moneys received at the Reformatory as income thereof from the sale of brooms to the various branches of the government of the District of Columbia shall remain available for the purchase of material for the manufacture of additional brooms to be similarly disposed

of. (June 5, 1920, 41 Stat. 869, ch. 234; Feb. 28, 1923, 42 Stat. 1357, ch. 148, § 1; June 28, 1944, 58 Stat. 533, ch. 300, § 18; 1973 Ed., § 24-418.)

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 402(212) of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to the District of Columbia Council, subject to the right of the Commissioner as provided in § 406 of the Plan. The

District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

§ 24-418a. Sale of gun mountings.

Any state of the United States or any political subdivision of any such state is authorized to purchase from the District of Columbia Reformatory located at Lorton, Virginia, at fair market prices determined by the Mayor of the District of Columbia, gun mountings and carriages for guns for use at historic sites and for museum display purposes. Receipts from sales authorized under this section shall be deposited to the credit of the Correctional Industries Fund established for the industrial enterprises at the Workhouse and Reformatory of the District of Columbia to the same extent and in the same manner as provided for receipts from the sale of products and services of such industrial enterprises in § 47-131. (June 1, 1957, 71 Stat. 45, Pub. L. 85-45, § 1; 1973 Ed., § 24-418a.)

References in text. — The § 47-131, referred to at the end of this section, was repealed by the Act of October 3, 1964, Pub. L. 88-622, § 6. Present § 47-131 concerns the establishment of a General Fund and special accounts and audits of closed special accounts.

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of

the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

§ 24-419. Workhouse; Reformatory; Superintendents and all other employees; appointment; discharge; supervision of Board of Public Welfare.

Omitted.

§ 24-420. Grounds of Jail increased.

The buildings and grounds adjoining the Washington Asylum in the District of Columbia, used prior to June 16, 1880, as a naval and army magazine are added to the grounds of the Washington Asylum and Jail and subjected to the control of the Mayor of the District of Columbia as part of the Asylum until otherwise ordered. (June 16, 1880, 21 Stat. 270, ch. 235; Mar. 2, 1911, 36 Stat. 1003, ch. 192; 1973 Ed., § 24-420.)

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and

Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

§ 24-421. Payment for subsistence of prisoners.

There shall be allowed and paid by the Attorney General for the subsistence of prisoners in the custody of any marshal of the United States and the Superintendent of the Washington Asylum and Jail in the District of Columbia such sum as it reasonably and actually costs to subsist them. And it shall be the duty of the Attorney General to prescribe such regulations for the government of the marshals and the Superintendent of the Washington Asylum and Jail in the District of Columbia in relation to their duties under §§ 24-412 to 24-416 and this section as will enable him to determine the actual and reasonable expenses incurred. (Mar. 3, 1901, 31 Stat. 1380, ch. 854, § 1204; Mar. 2, 1911, 36 Stat. 1003, ch. 192; 1973 Ed., § 24-421.)

§ 24-422. Payment for maintenance of Jail.

All expenses incurred for maintenance of the Jail of the District of Columbia and for support of prisoners therein shall be paid out of the revenues of the District of Columbia, and estimates for such expenses shall each year be submitted in the annual estimates for the expenses of the government of the District of Columbia. (Aug. 18, 1894, 28 Stat. 417, ch. 301; June 29, 1922, 42 Stat. 668, ch. 249; 1973 Ed., § 24-422.)

§ 24-423. Reimbursement of United States.

The United States shall be reimbursed, as heretofore, for the maintenance of District of Columbia inmates, and all sums paid by such District for such maintenance for the service of the fiscal year 1927 and subsequent fiscal years shall be covered into the Treasury as “miscellaneous receipts.” (Apr. 29, 1926, 44 Stat. 347, ch. 195, title II; 1973 Ed., § 24-423.)

§ 24-424. Charge against District for care of convicts.

The cost of the care and custody of District of Columbia convicts in any federal penitentiary shall be charged against the District of Columbia in quarterly accounts to be rendered by the disbursing officer of said penitentiary; and the amount to be charged against the District of Columbia shall be ascertained by multiplying the average daily number of District of Columbia convicts confined in the penitentiary during the quarter by the per capita cost for all prisoners in such penitentiary for the same quarter but excluding expenses of construction or extraordinary repair of buildings. (Mar. 3, 1915, 38 Stat. 869, ch. 75, § 1; 1973 Ed., § 24-424.)

Cited in *Cannon v. United States*, 645 F.2d 1128 (D.C. Cir. 1981); *Pitts v. United States*, 641 F. Supp. 368 (D.D.C. 1986); *Thornburgh*, 866 F.2d 1450 (D.C. Cir. 1989).

§ 24-425. Place of imprisonment.

All prisoners convicted in the District of Columbia for any offense, including violations of municipal regulations and ordinances and acts of Congress in the nature of municipal regulations and ordinances, shall be committed, for their terms of imprisonment, and to such types of institutions as the court may direct, to the custody of the Attorney General of the United States or his authorized representative, who shall designate the places of confinements where the sentences of all such persons shall be served. The Attorney General may designate any available, suitable, and appropriate institutions, whether maintained by the District of Columbia government, the federal government, or otherwise, or whether within or without the District of Columbia. The Attorney General is also authorized to order the transfer of any such person from one institution to another if, in his judgment, it shall be for the well-being of the prisoner, or relieve overcrowding or unhealthful conditions in the institution where such prisoner is confined, or for other reasons. (July 15, 1932, ch. 492, § 11; June 6, 1940, 54 Stat. 244, ch. 254, § 8; 1973 Ed., § 24-425.)

Cross references. — As to designation of Mayor as representative of Attorney General, see § 24-468.

Section references. — This section is referred to in §§ 24-207 and 24-468.

Legislative intent. — This section was primarily designed to ensure that the Attorney General retained assignment and transfer power over prisoners initially assigned to District institutions under § 24-402, so that when parole violations occurred outside the District while the violator was on parole from the District system, the violator could be transferred to an institution other than one belonging to the District of Columbia. *United States v. District of Columbia*, 703 F. Supp. 982 (D.D.C. 1988), aff'd as modified, 897 F.2d 1152 (D.C. Cir. 1990).

A review of the legislative history of this section reveals that Congress intended District of Columbia prisoners to be housed in D.C.

prisons and to be the responsibility of the D.C. government. *United States v. District of Columbia*, 703 F. Supp. 982 (D.D.C. 1988), aff'd as modified, 897 F.2d 1152 (D.C. Cir. 1990).

Required showing to make successful claim of Eighth Amendment violation. — To successfully claim that his Eighth Amendment rights against cruel and unusual punishment have been violated by prison officials, a prisoner must show either that the officials wilfully violated their responsibilities to protect the prisoner or that violence and sexual assaults occur with sufficient frequency to put the prisoner in reasonable fear for his safety and to reasonably apprise prison officials of the existence of the problem and the need for protective measures. *Murphy v. United States*, 653 F.2d 637 (D.C. Cir. 1981).

Limitations on Attorney General's discretion in designating place of confinement. — Under this section, the District of

Columbia must continue to accept and maintain prisoners duly designated by the Attorney General to the D.C. Department of Corrections, provided that such designation would not cause the D.C. facilities to exceed population limits set by the United States District Court. When, however, the specific facilities designated meet or exceed court-ordered population ceilings and no other regular or emergency facilities exist within the D.C. correctional system to house the assigned adult male prisoners, the Attorney General's designation of the D.C. Department of Corrections as an "available, suitable, and appropriate" institution of confinement is an arbitrary and capricious abuse of discretion. In such circumstances, the Attorney General must retain custody of said prisoners. *United States v. District of Columbia*, 703 F. Supp. 982 (D.D.C. 1988), *aff'd as modified*, 897 F.2d 1152 (D.C. Cir. 1990).

The language of this section clearly establishes criteria to which the Attorney General must adhere in designating places of confinement for District of Columbia prisoners, consideration of which is subject to judicial review. *United States v. District of Columbia*, 703 F. Supp. 982 (D.D.C. 1988), *aff'd as modified*, 897 F.2d 1152 (D.C. Cir. 1990).

Constitutional standards provide the most definitive and ascertainable measure of whether a facility is available, suitable, and appropriate within the meaning of this section, and review under the Administrative Procedure Act is unnecessary as it would only mirror review under the Constitution. *United States v. District of Columbia*, 897 F.2d 1152 (D.C. Cir. 1990).

District could properly be enjoined from refusing to accept into the District of Columbia Department of Corrections facilities newly sentenced adult male prisoners whom the Attorney General assigned to the Department, provided that the designation would not cause the District to violate court-ordered population caps or the constitutional rights of prisoners. *United States v. District of Columbia*, 897 F.2d 1152 (D.C. Cir. 1990).

The transfer power of the Attorney General is not limited to District and federal facilities. *Vaughn v. United States*, App. D.C., 579 A.2d 170 (1990).

Housing of locally convicted prisoners. — This section, in conjunction with §§ 24-402 and 24-410, imposes primary responsibility upon the District of Columbia for housing locally convicted prisoners. *United States v. District of Columbia*, 897 F.2d 1152 (D.C. Cir. 1990).

Federal control over daily supervisory operations necessary for liability for injuries. — An actual demonstration of federal control over day-to-day supervisory operations of the prison is necessary for Federal Tort

Claims Act, 28 U.S.C. § 2671 et seq., liability for injuries to prisoners in the legal custody of the United States Attorney General. *Cannon v. United States*, 645 F.2d 1128 (D.C. Cir. 1981).

Employees of Lorton Reformatory are not persons acting on behalf of federal agency in an official capacity when they undertake to supervise federal prisoners who have been committed to the legal custody of the Attorney General. *Cannon v. United States*, 645 F.2d 1128 (D.C. Cir. 1981).

Incarceration outside District. — Although it was inconvenient to the female plaintiffs and their families, they did not have a justifiable expectation that the plaintiffs would be incarcerated in a facility in the District of Columbia or its metropolitan area, and neither their statutory nor their constitutional rights were violated by their incarceration outside the District of Columbia. *Pitts v. Meese*, 684 F. Supp. 303 (D.D.C. 1987), *aff'd sub nom. Pitts v. Thornburgh*, 866 F.2d 1450 (D.C. Cir. 1989).

No expectation that prisoner will not be transferred. — In the absence of a written rule or regulation confining transfers of District of Columbia prisoners to cases of misconduct and in light of clear and apparently limitless authority of the Attorney General to transfer District of Columbia prisoners to federal facilities, any expectation of a District of Columbia prisoner that he will not be transferred to a federal prison is unjustified so that due process protections are not triggered with regard to such transfer. *Curry-Bey v. Jackson*, 422 F. Supp. 926 (D.D.C. 1976).

As long as this section is in the Code, a District of Columbia prisoner can have no legitimate expectation that he will remain at Lorton throughout his term and, therefore, a prisoner has no interest protected by the due process clause from summary deprivation. Since a prisoner's interest in remaining at Lorton is not even protected against intentional invasion, a fortiori, the law will not protect it from negligent invasion. *District of Columbia v. Cooper*, App. D.C., 483 A.2d 317 (1984).

A District of Columbia prisoner can have no legitimate expectation that he will remain at Lorton throughout his term. Without such an expectation, a prisoner has no interest which is protected by the Due Process Clause from summary deprivation. *Nowlin v. Director, D.C. Dep't of Cors.*, 689 F. Supp. 26 (D.D.C. 1988).

The plaintiff, once legally convicted, had no constitutionally protected right to incarceration in any particular facility. *Ali v. United States*, 743 F. Supp. 50 (D.D.C. 1990).

Disciplinary transfer does not unconstitutionally infringe upon prisoners' rights. — The rights of parole, work release, furlough and good time credit belonging to prisoners at the Lorton Correctional Complex are not unconstitutionally infringed by the transfer of

prisoners for disciplinary reasons to federal prisons in other states. *Curry-Bey v. Jackson*, 422 F. Supp. 926 (D.D.C. 1976).

Federal prisoner is not entitled to administrative hearing before his transfer from reformatory to penitentiary. *Smith v. Saxbe*, 562 F.2d 729 (D.C. Cir. 1977).

Hearings prior to transfer. — District of Columbia prisoners have no due process right to a hearing before being transferred to another prison. *Nowlin v. Director, D.C. Dep't of Cors.*, 689 F. Supp. 26 (D.D.C. 1988).

Parole review. — District of Columbia Code offenders properly incarcerated in federal penitentiaries under this section are subject to parole review before the United States Parole Commission rather than the District of Columbia Parole Board. *Goode v. Markley*, 603 F.2d 973 (D.C. Cir. 1979), cert. denied, 444 U.S. 1083, 100 S. Ct. 1039, 62 L. Ed. 2d 768 (1980).

Escape from mental hospital subject to Federal Escape Act. — The transfer of physical custody of the defendant to a mental hospital from a District of Columbia jail pursuant to § 24-302 was not inconsistent with nor exclusive of the legal custody of the Attorney General, and defendant's escape from such hospital was an escape from the "custody of the Attorney General," within the Federal Escape Act (18 U.S.C. §§ 751, 752, 1072). *Frazier v. United States*, 339 F.2d 745 (D.C. Cir.), cert. denied, 379 U.S. 948, 85 S. Ct. 446, 13 L. Ed. 2d 545 (1964).

Departure from halfway house an escape from Attorney General's custody. — Where a convicted defendant left a halfway house run by a nonprofit organization operating under a contract with the Department of Corrections without permission, his action constituted an escape from the Attorney General's

legal custody to which defendant was remitted at the time of sentence, and which continued even when he was assigned to a facility not under the control of the Department of Justice. *United States v. Taylor*, 485 F.2d 1077 (D.C. Cir. 1973).

Allegation of transfer to hamper pending habeas corpus proceeding. — A defendant's allegation that he had been transferred from confinement in Virginia to jail in the District of Columbia hampered his pending habeas corpus hearing in the Court of Appeals for 4th Circuit did not present moot question, and defendant was entitled to hearing at least as to the legality of his transfer in view of failure of District of Columbia to controvert defendant's allegations. *Bolden v. Clemmer*, 298 F.2d 306 (D.C. Cir. 1961).

Cited in *Milhouse v. Levi*, 548 F.2d 357 (D.C. Cir. 1976); *Campbell v. McGruder*, 580 F.2d 521 (D.C. Cir. 1978); *Dobbs v. Neverson*, App. D.C., 393 A.2d 147 (1978); *Gale v. United States Dep't of Justice*, 628 F.2d 224 (D.C. Cir. 1980); *Bryant v. Civiletti*, 663 F.2d 286 (D.C. Cir. 1981); *Neal v. Director, D.C. Dep't of Cors.*, 684 F.2d 17 (D.C. Cir. 1982); *United States v. Redwood*, 110 WLR 1485 (Super. Ct. 1982); *Cosgrove v. Smith*, 697 F.2d 1125 (D.C. Cir. 1983); *Morgan v. District of Columbia*, 618 F. Supp. 754 (D.D.C. 1985); *James-Bey v. Freeman*, 638 F. Supp. 758 (D.D.C. 1986); *Ross v. United States*, 641 F. Supp. 368 (D.D.C. 1986); *Brame v. Palmer*, App. D.C., 510 A.2d 229 (1986); *Twelve John Does v. District of Columbia*, 841 F.2d 1133 (D.C. Cir. 1988); *Jackson v. Thornburgh*, 702 F. Supp. 9 (D.D.C. 1988), aff'd, 907 F.2d 194 (D.C. Cir. 1990); *Pitts v. Thornburgh*, 866 F.2d 1450 (D.C. Cir. 1989); *Lee v. Thornburgh*, 877 F.2d 1053 (D.C. Cir. 1989).

§ 24-426. Rewards.

The Mayor of the District of Columbia, pursuant to regulations prescribed by the Council of the District of Columbia, is authorized to provide for the payment of rewards for the capture, or for information leading to the apprehension, of fugitives from District of Columbia penal, correctional, and welfare institutions and of conditional release and parole violators. Funds appropriated pursuant to this section shall be apportioned and expended in the discretion of, and upon such conditions as may be imposed by, the Mayor of the District of Columbia. No reward money shall be paid to any officer or employee of the Metropolitan Police Department, or of any penal, correctional, or welfare institution, or of any court, legal agency, or other agency closely involved in the criminal justice system. (1973 Ed., § 24-426; Oct. 26, 1973, 87 Stat. 506, Pub. L. 93-140, § 11.)

Cross references. — As to general prohibition against rewards to police officers, see § 4-125.

As to prohibition against police officers receiving compensation from persons arrested or liable for arrest, see § 4-175.

Change in government. — This section originated at a time when local government powers were delegated to the District of Columbia Council and to a Commissioner of the District of Columbia. The District of Columbia

Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

§ 24-427. Discharge and release payments.

The Mayor of the District of Columbia is authorized to furnish each prisoner upon his release from a penal or correctional institution under the jurisdiction of the government of the District of Columbia with suitable clothing and, in the discretion of the Mayor, a sum of money, which shall not exceed \$100. (1973 Ed., § 24-427; Oct. 26, 1973, 87 Stat. 506, Pub. L. 93-140, § 12.)

Change in government. — This section originated at a time when local government powers were delegated to the District of Columbia Council and to a Commissioner of the District of Columbia. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia

Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

§ 24-428. Institutional good time.

Repealed. Aug. 20, 1994, D.C. Law 10-151, § 802, 41 DCR 2608.

Emergency act amendments. — For temporary repeal of section, see § 802 (a) of the Omnibus Criminal Justice Reform Emergency Amendment Act of 1994 (D.C. Act 10-255, June 22, 1994, 41 DCR 4286).

Legislative history of Law 10-151. — See note to § 24-429.1.

Cited in *Noble v. United States Parole Comm'n*, 887 F. Supp. 11 (D.D.C. 1995).

§ 24-429. Educational good time.

(a) Every person whose conduct complies with institutional rules and who demonstrates a desire for self-improvement by successfully completing an academic or vocational program, including special education and Graduate Equivalency Diploma programs, shall earn educational good time credits of no less than 3 days a month and not more than 5 days a month. These credits shall not be awarded until completion of the academic or vocational program.

(b) Educational good time credits authorized by the provisions of this section shall be applied to the person's minimum term of imprisonment to determine the date of eligibility for release on parole and to the person's maximum term of imprisonment to determine the date when release on parole becomes mandatory. (Apr. 11, 1987, D.C. Law 6-218, § 3, 34 DCR 484.)

Legislative history of Law 6-218. — Law 6-218, the "District of Columbia Good Time

Credits Act of 1986," was introduced in Council and assigned Bill No. 6-505, which was referred

to the Committee on the Judiciary. The Bill was adopted on first and second readings on November 25, 1986, and December 16, 1986, respectively. Signed by the Mayor on January 8, 1987, it was assigned Act No. 6-253 and transmitted to both Houses of Congress for its review.

Habeas corpus petition. — The plaintiff's

claim for good time credits and a determination that he was entitled to an immediate or speedier release could only be construed as a habeas petition. *Doughty v. United States Bd. of Parole*, 782 F. Supp. 653 (D.D.C.), *aff'd*, 971 F.2d 765 (D.C. Cir. 1992).

§ 24-429.1. Meritorious good time credit.

(a) In the discretion of the Director of the Department of Corrections, a prisoner may be allowed meritorious good time credit for performing exceptionally meritorious service or performing duties of outstanding importance in connection with institutional operations.

(b) Meritorious good time credits authorized by this section shall be applied to the person's minimum term of imprisonment to determine the date of eligibility for release on parole and to the person's maximum term of imprisonment to determine the date when release on parole becomes mandatory. (Apr. 11, 1987, D.C. Law 6-218, § 3a, as added Aug. 20, 1994, D.C. Law 10-151, § 802(b), 41 DCR 2608.)

Effect of amendments. — D.C. Law 10-151 added this section.

Emergency act amendments. — For temporary addition of section, see § 802(b) of the Omnibus Criminal Justice Reform Emergency Amendment Act of 1994 (D.C. Act 10-255, June 22, 1994, 41 DCR 4286).

Legislative history of Law 10-151. — Law 10-151, the "Omnibus Criminal Justice Reform Amendment Act of 1994," was introduced in

Council and assigned Bill No. 10-98, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on March 29, 1994, and April 12, 1994, respectively. Signed by the Mayor on May 4, 1994, it was assigned Act No. 10-238 and transmitted to both Houses of Congress for its review. D.C. Law 10-151 became effective on August 20, 1994.

§ 24-429.2. Limitations.

Educational and meritorious good time credits shall not reduce the minimum sentence of any inmate convicted of a crime of violence as defined by § 22-3201, by more than 15%. (Apr. 11, 1987, D.C. Law 6-218, § 3b, as added Aug. 20, 1994, D.C. Law 10-151, § 802(c), 41 DCR 2608.)

Effect of amendments. — D.C. Law 10-151 added this section.

Emergency act amendments. — For temporary addition of section, see § 802(c) of the Omnibus Criminal Justice Reform Emergency

Amendment Act of 1994 (D.C. Act 10-255, June 22, 1994, 41 DCR 4286).

Legislative history of Law 10-151. — See note to § 24-429.1.

§ 24-430. Administration of good time credits.

(a)(1) The Mayor shall administer the award of educational good time credits.

(2) The Mayor shall promulgate proposed rules for granting, withholding, forfeiting, cancelling, and restoring educational good time credits.

(3) The proposed rules shall be submitted to the Council of the District of Columbia ("Council") for a 45-day period of review, excluding Saturdays, Sundays, legal holidays, and days of Council recess. If the Council does not

approve or disapprove the proposed rules, in whole or in part, by resolution within this 45-day review period, the proposed rules shall be deemed approved.

(b) The Mayor shall establish an Institutional Appeals Board (“Board”) of 5 persons not employed by the Department of Corrections, to review the granting, withholding, forfeiture, cancellation, and restoration of good time credits. The Department shall provide staff support to the board. An inmate shall be entitled to appeal a decision to the board. The board shall review the record of the inmate and any additional materials submitted by the inmate or the Department. The decision of the board shall be final. (Apr. 11, 1987, D.C. Law 6-218, § 4, 34 DCR 484.)

Section references. — This section is referred to in § 24-432.

Legislative history of Law 6-218. — See note to § 24-429.

Administrative responsibility. — A deter-

mination of eligibility for good time credits is an administrative, not a judicial, responsibility. *Murray v. Stempson*, App. D.C., 633 A.2d 48 (1993).

§ 24-431. Jail time; parole.

(a) Every person shall be given credit on the maximum and the minimum term of imprisonment for time spent in custody or on parole as a result of the offense for which the sentence was imposed. When entering the final order in any case, the court shall provide that the person be given credit for the time spent in custody or on parole as a result of the offense for which sentence was imposed.

(b) When a person has been in custody due to a charge that resulted in a dismissal or acquittal, the time that would have been credited against a sentence for the charge, had the charge not resulted in a dismissal or acquittal, shall be credited against any sentence that is based upon a charge for which a warrant or commitment detainer was placed during the pendency of the custody.

(c) Any person who is sentenced to a term of confinement in a correctional facility or hospital shall have deducted from the term all time actually spent, pursuant to a court order, by the person in a hospital for examination purposes or treatment prior to trial or pending an appeal. (Apr. 11, 1987, D.C. Law 6-218, § 5, 34 DCR 484.)

Legislative history of Law 6-218. — See note to § 24-429.

Applicability. — The Good Time Credits Act, as amended in 1991, applies to all D.C. Code offenders, irrespective of where they are incarcerated. *Franklin v. Ridley*, App. D.C., 635 A.2d 356 (1993).

Effect of recomputed sentence. — Time spent on parole prior to April 11, 1987, the effective date of this section, cannot be credited against a person’s sentence when that person’s sentence is recomputed after April 11, 1987. *Luck v. District of Columbia*, App. D.C., 617 A.2d 509 (1992).

The District of Columbia Parole Board and the District of Columbia Department of Correc-

tions properly interpreted subsection (a) of this section in deciding that time spent on parole prior to the effective date of the Good Time Credit Act (D.C. Law 6-218) could not be credited against defendant’s sentence when that person’s sentence was recomputed after the effective date. *Luck v. D.C. Parole Bd.*, 996 F.2d 372 (D.C. Cir. 1993).

Credit only for time as “result of” sentenced offense. — This section requires credit for pre-sentencing time spent in custody as a “result of” the sentenced offense, but that pre-sentencing credit is not available for periods of time spent in custody before sentencing for one offense when the defendant was serving a sentence for another offense during that same time

period. *Ali v. District of Columbia*, App. D.C., 612 A.2d 228 (1992).

Credits against aggregate federal sentence. — This sections grants defendant credit for street time, for time served on his parole from a D.C. sentence against aggregate federal

sentence. *Noble v. United States Parole Comm'n*, 887 F. Supp. 11 (D.D.C. 1995).

Cited in *United States v. Thompson*, 994 F.2d 864 (D.C. Cir.), cert. denied, — U.S. —, 114 S. Ct. 400, 126 L. Ed. 2d 348 (1993); *Maldonado v. Maldonado*, App. D.C., 631 A.2d 40 (1993).

§ 24-432. Forfeiture.

The award of good time credits for good behavior and faithful performance of duties may be forfeited, withheld, and restored by the Director, in accordance with rules promulgated by the Mayor pursuant to § 24-430, after a hearing, which shall be conducted in accordance with the rules. (Apr. 11, 1987, D.C. Law 6-218, § 6, 34 DCR 484.)

Legislative history of Law 6-218. — See note to § 24-429.

§ 24-433. Reporting requirement.

The Department shall regularly inform inmates of all awards, forfeitures, and restorations of good time credits, and shall inform the Board of Parole of all persons who are expected to become eligible for release on parole within 45 days of their eligibility date, and shall inform the Board of Parole of all persons whose release on parole will become mandatory within 45 days of the date when their release on parole becomes mandatory. (Apr. 11, 1987, D.C. Law 6-218, § 7, 34 DCR 484.)

Legislative history of Law 6-218. — See note to § 24-429.

§ 24-434. Exceptions.

Institutional and educational good time credits shall not be applied to the minimum terms of persons sentenced under § 22-3202, § 33-501, § 33-541, § 22-2404 (b), § 22-2903, or § 22-3204 (b). (Apr. 11, 1987, D.C. Law 6-218, § 8, 34 DCR 484; Nov. 2, 1989, D.C. Law 8-52, § 2, 36 DCR 4740; Jan. 30, 1990, D.C. Law 8-57, § 2, 36 DCR 5761; May 8, 1993, D.C. Law 9-270, § 4, 39 DCR 9223; Oct. 2, 1993, D.C. Law 10-26, § 4, 40 DCR 3416.)

Cross references. — As to additional penalty for committing crime when armed, see § 22-3202.

As to definition of “addict” under the Mandatory-Minimum Sentences Initiative of 1981, see § 33-501.

As to penalties for manufacture, distribution, or possession of a controlled substance, see § 33-541.

Legislative history of Law 6-218. — See note to § 24-429.

Legislative history of Law 8-52. — Law 8-52, the “Good Time Credits Temporary Amendment Act of 1989,” was introduced in Council and assigned Bill No. 8-296. The Bill

was adopted on first and second readings on May 30, 1989 and June 13, 1989, respectively. Signed by the Mayor on June 27, 1989, it was assigned Act No. 8-51 and transmitted to both Houses of Congress for its review.

Legislative history of Law 8-57. — Law 8-57, the “Good Time Credits Amendment Act of 1989,” was introduced in Council and assigned Bill No. 8-303, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on June 27, 1989 and July 11, 1989, respectively. Signed by the Mayor on July 27, 1989, it was assigned Act No. 8-71 and transmitted to both Houses of Congress for its review.

Legislative history of Law 9-270. — Law 9-270, the “Carjacking Prevention Temporary Amendment Act of 1992,” was introduced in Council and assigned Bill No. 9-629. The Bill was adopted on first and second readings on October 6, 1992, and November 4, 1992, respectively. Signed by the Mayor on November 25, 1992, it was assigned Act No. 9-328 and transmitted to both Houses of Congress for its review. D.C. Law 9-270 became effective on May 8, 1993.

Legislative history of Law 10-26. — Law 10-26, the “Carjacking Prevention Amendment

Act of 1993,” was introduced in Council and assigned Bill No. 10-16, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on April 7, 1993, and May 4, 1993, respectively. Signed by the Mayor on May 19, 1993, it was assigned Act No. 10-28 and transmitted to both Houses of Congress for its review. D.C. Law 10-26 became effective on October 2, 1993.

Cited in *Solomon v. United States*, App. D.C., 569 A.2d 1185 (1990); *Winters v. Ridley*, App. D.C., 596 A.2d 569 (1991).

Subchapter II. Department of Corrections.

§ 24-441. Created.

There is created in and for the District of Columbia a Department of Corrections to be under the charge of a Director who shall be appointed by the Mayor of the District of Columbia. (June 27, 1946, 60 Stat. 320, ch. 507, § 1; 1973 Ed., § 24-441.)

Cross references. — As to Director of Department of Corrections to designate officers of Department to whom services of a psychiatrist and a psychologist are available, see § 24-106.

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

Department of Corrections abolished. — The Department of Corrections was abolished and the functions thereof transferred to the Board of Commissioners of the District of Columbia by Reorganization Plan No. 5 of 1952. Reorganization Order No. 34 of the Board of

Commissioners, dated May 28, 1953, established under the direction and control of a Commissioner, a Department of Corrections headed by a Director. The Department was established to provide for the custody, care, discipline, and instruction of all persons committed to the Workhouse, Lorton Reformatory, Women’s Reformatory, and the Washington Asylum and Jail. All positions under the previously existing Department of Corrections including the duties, powers, and authorities of all officers and employees were assigned to the new Department of Corrections and the previously existing Department was abolished. The executive functions of the Board of Commissioners were transferred to the Commissioner of the District of Columbia by § 401 of Reorganization Plan No. 3 of 1967. Section 402(213) of the Plan transferred the regulatory and other functions of the Board of Commissioners under § 24-442 relating to rules and regulations for the government of institutions to the District of Columbia Council, subject to the right of the Commissioner as provided by § 406 of the Plan. Reorganization Order No. 34 was replaced by Organization Order No. 154, dated February 7, 1967, which was amended and redesignated as Organization Order No. 7, dated December 26, 1967.

Cited in *Cannon v. United States*, 645 F.2d 1128 (D.C. Cir. 1981); *Lee v. Thornburgh*, 877 F.2d 1053 (D.C. Cir. 1989); *Foster v. United States*, App. D.C., 615 A.2d 213 (1992).

§ 24-442. Powers; promulgation of rules.

Said Department of Corrections under the general direction and supervision of the Mayor of the District of Columbia shall have charge of the management and regulation of the Workhouse at Occoquan in the State of Virginia, the Reformatory at Lorton in the State of Virginia, and the Washington Asylum and Jail, and be responsible for the safekeeping, care, protection, instruction, and discipline of all persons committed to such institutions. The Department of Corrections with the approval of the Council of the District of Columbia shall have power to promulgate rules and regulations for the government of such institutions and to establish and conduct industries, farms, and other activities, to classify the inmates, and to provide for their proper treatment, care, rehabilitation, and reformation. (June 27, 1946, 60 Stat. 320, ch. 507, § 2; 1973 Ed., § 24-442.)

Cross references. — As to former management and control of institutions, see § 3-106.

As to apprehension of prison fugitives, see § 24-426.

As to prohibition against payment of rewards to officers and employees of Department of Corrections, see § 24-426.

Section references. — This section is referred to in § 24-481.

Emergency act amendments. — For temporary amendment of section, see § 3 of the Lorton Regulations Approval Emergency Amendment Act of 1996 (D.C. Act 11-187, January 25, 1996, 43 DCR 393).

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 402(213) of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to the District of Columbia Council, subject to the right of the Commissioner as provided in § 406 of the Plan. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

Department of Corrections abolished. — See note to § 24-441.

Regulations governing Lorton Correctional Complex approved. — Section 2 of

D.C. Law 4-153 provided that the Council approved the regulations governing residents of the Lorton Correctional Complex as adopted by the Director of Corrections on February 18, 1981 and published in the D.C. Register on February 27, 1981 (28 DCR 865).

Standard for measuring constitutionality of conditions of pretrial confinement.

— Absent a violation of specific constitutional guarantees, the constitutionality of the conditions of pretrial confinement can be measured only by balancing the liberty interests of the pretrial detainee against the need of the state to protect the safety of the community. *Campbell v. McGruder*, 580 F.2d 521 (D.C. Cir. 1978).

Pretrial detainees generally retain more rights than convicted prisoners. *Campbell v. McGruder*, 580 F.2d 521 (D.C. Cir. 1978).

Each restriction of jail regimen upon pretrial detainees must be examined carefully to determine if it is justified by substantial necessities of jail administration. *Campbell v. McGruder*, 580 F.2d 521 (D.C. Cir. 1978).

Certain conditions subjected to closest scrutiny. — Conditions of confinement that are likely to impair a pretrial detainee's mental or physical health or that impede the preparation of his defense or induce him to plead guilty should be subjected to the closest scrutiny and can be justified only by the most compelling necessity. *Campbell v. McGruder*, 580 F.2d 521 (D.C. Cir. 1978).

Equal application of law. — This section applies equally to all persons who are under arrest and in the custody and control of members of the Metropolitan Police Department. *Toy v. District of Columbia*, App. D.C., 549 A.2d 1 (1988).

Regulation and discipline of prisoners convicted of offenses against United States has been committed to prison authorities. *Fulwood v. Clemmer*, 206 F. Supp. 370 (D.D.C. 1962).

Withholding discretionary procedural rights from inmates. — If prison officials choose to withhold from the inmates at the Lorton Correctional Complex procedural rights which the Supreme Court has clearly held to be a matter of discretion, those inmates are bound by that decision for as long as they remain at Lorton and the Attorney General is under no duty to see that such procedural rights are afforded to them. *Curry-Bey v. Jackson*, 422 F. Supp. 926 (D.D.C. 1976).

Equity jurisdiction of courts. — Nothing in this section explicitly curtails the equity jurisdiction conferred on the court by § 11-921(a). *Women Prisoners of Dep't of Cors. v. District of Columbia*, 899 F. Supp. 659 (D.D.C. 1995).

This provision encompasses common law rule which imposes upon prison authorities and employees a duty to exercise reasonable care in the protection and safekeeping of prisoners. *Hughes v. District of Columbia*, App. D.C., 425 A.2d 1299 (1981); *Toy v. District of Columbia*, App. D.C., 549 A.2d 1 (1988).

Negligence per se. — There is nothing in this section that could give rise to a claim of negligence per se, let alone to a claim that the entire responsibility for an injury falls on the District absent an inmate's wilful, wanton, or reckless conduct. *District of Columbia v. Mitchell*, App. D.C., 533 A.2d 629 (1987).

When a District of Columbia prisoner is assaulted by fellow prisoners, the District is not ipso facto liable for the resulting injuries. The injured inmate must show both that the District breached its duty to protect him from harm, and that his injuries were a proximate result of that breach. *District of Columbia v. Carmichael*, App. D.C., 577 A.2d 312 (1990).

Medical standard of care owed prisoners. — Physicians owe the same standard of care to prisoners as physicians owe to private patients generally. *District of Columbia v. Mitchell*, App. D.C., 533 A.2d 629 (1987).

Where deviations from the general standard of adequate medical care, as well as deviations from prison standards, were the proximate cause of foreseeable injury to prisoners, necessary reforms in obstetrical and gynecological care to bring the prison into compliance with this section were correctly ordered by the court. *Women Prisoners v. District of Columbia*, 877 F. Supp. 634 (D.D.C. 1994), modified, 899 F. Supp. 659 (D.D.C. 1995).

Inadequate medical care violation of this section. — Women prisoners lacked adequate obstetrical and gynecological care at correctional treatment facility in violation of this section. *Women Prisoners of Dep't of Cors. v. District of Columbia*, 899 F. Supp. 659 (D.D.C. 1995).

Prison authorities have a statutory responsibility to exercise reasonable care in

assuring safe conditions in prison dormitories; what is reasonable depends upon the dangerousness of the activity involved. *District of Columbia v. Mitchell*, App. D.C., 533 A.2d 629 (1987).

Responsibility for safety generally. — Prison's failure to test the sprinkler system quarterly, failure to maintain the sprinkler system, failure to test the fire pump annually, the leakage of water in the basement and culinary area, the failure to conduct adequate fire drills and the blocking of the sprinklers in the culinary spaces, all violated this section. *Women Prisoners v. District of Columbia*, 877 F. Supp. 634 (D.D.C. 1994), modified, 899 F. Supp. 659 (D.D.C. 1995).

Inmate's duty to report danger. — Inmate who knows of danger and has reason to believe prison authorities in fact do not know about it has a duty to report danger, if he is not otherwise constrained; otherwise, that inmate cannot personally recover (because of the absolute bar of contributory negligence) for injuries that his own actions might have prevented. *District of Columbia v. Mitchell*, App. D.C., 533 A.2d 629 (1987).

Prisoner generally cannot be found contributorily negligent simply because he or she fails to report a dangerous condition which prison management, through its control of the premises, could have reasonably been expected to discover through regular shake-down and maintenance procedures. *District of Columbia v. Mitchell*, App. D.C., 533 A.2d 629 (1987).

Prison personnel are not insurers of inmate's safety. Thus, the fact that an inmate is assaulted and sustains injuries does not, by itself, establish liability. *Hughes v. District of Columbia*, App. D.C., 425 A.2d 1299 (1981).

Federal control over daily supervisory operations necessary for liability for injuries. — An actual demonstration of federal control over day-to-day supervisory operations of the prison is necessary for Federal Tort Claims Act, 28 U.S.C. § 2671 et seq., liability for injuries to prisoners in the legal custody of the United States Attorney General. *Cannon v. United States*, 645 F.2d 1128 (D.C. Cir. 1981).

No federal liability for torts by independent contractor. — The statutory delegation of day-to-day control of Lorton to District authorities renders Lorton an independent contractor with the federal government for the purpose of caring for federal prisoners housed there, and thus precludes federal liability for torts occasioned in the performance of that duty. *Cannon v. United States*, 645 F.2d 1128 (D.C. Cir. 1981).

Evidence necessary to establish standard of reasonable care. — The question of whether prison officials acted reasonably to secure the safety of an inmate is not one within

the realm of the everyday experiences of a lay person. Thus, expert testimony or supporting evidence is necessary to establish that standard. *Hughes v. District of Columbia*, App. D.C., 425 A.2d 1299 (1981).

In negligence action against the District brought by inmates assaulted by fellow inmates in Lorton, evidence was insufficient, in that the testimony of an expert on inmates did not prove a standard of care relating to the control of contraband weapons in a maximum security prison such as Lorton. *District of Columbia v. Carmichael*, App. D.C., 577 A.2d 312 (1990).

Review of prison authorities' actions. — The actions of prison authorities, including the granting or withdrawal of claimed privileges of prisoners, are not reviewable by the court in a mandamus proceeding in the absence of specific allegations particularly showing a clear breach of duty by prison administrators. *White v. Clemmer*, 295 F.2d 132 (D.C. Cir. 1961), cert. denied, 368 U.S. 992, 82 S. Ct. 611, 7 L. Ed. 2d 529 (1962).

Where issue was whether the police officers in the Traffic Division administered CPR correctly after they discovered prisoner hanging in his cell, plaintiffs bore the burden of proof on this threshold issue, and expert testimony was necessary because the manner in which CPR is administered is a matter which is beyond the knowledge of the average layperson. *Toy v. District of Columbia*, App. D.C., 549 A.2d 1 (1988).

No expectation that prisoner will not be transferred. — In the absence of a written rule or regulation confining transfers of District of Columbia prisoners to cases of misconduct and in light of clear and apparently limitless authority of the Attorney General to transfer District of Columbia prisoners to federal facilities, any expectation of a District of Columbia prisoner that he will not be transferred to a federal prison is unjustified so that due process protections are not triggered. *Curry-Bey v. Jackson*, 422 F. Supp. 926 (D.D.C. 1976).

Disciplinary transfer does not unconstitutionally infringe upon prisoners' rights. — The rights of parole, work release, furlough and good time credit belonging to prisoners at the Lorton Correctional Complex are not unconstitutionally infringed by the transfer of prisoners for disciplinary reasons to federal prisons in other states. *Curry-Bey v. Jackson*, 422 F. Supp. 926 (D.D.C. 1976).

Claims by Lorton inmates to be heard in District of Columbia courts. — In light of Lorton's unique relationship to the District of Columbia, claims by inmates at Lorton should be heard in the courts of the District of Columbia. *Smith-Bey v. District of Columbia*, 546 F. Supp. 813 (D.D.C. 1982).

Lorton Reformatory is not agency of United States for purposes of the Federal Tort Claims Act, 28 U.S.C. § 2671 et seq. *Cannon v. United States*, 645 F.2d 1128 (D.C. Cir. 1981).

Attorney General has authority to regulate furlough program at Lorton Reformatory despite passage of District of Columbia Court Reform and Criminal Procedure Act (July 29, 1970, 84 Stat. 473, Pub. L. 91-358) and District of Columbia Self-Government and Governmental Reorganization Act (Dec. 24, 1973, 87 Stat. 774, Pub. L. 93-198), and therefore has authority to issue order which curtailed furlough privileges previously available to certain inmates at Lorton. *Milhouse v. Levi*, 548 F.2d 357 (D.C. Cir. 1976).

Attorney General's order denying furlough eligibility to persons in Lorton Reformatory convicted prior to order is not prohibited by ex post facto clause of Constitution. *Milhouse v. Levi*, 548 F.2d 357 (D.C. Cir. 1976).

Constitutionally impermissible conditions. — Conditions at District of Columbia jail, including overcrowding, lack of segregation of sentenced from unsentenced residents, lack of classification program for determining level and security needed for unsentenced residents, and numerous violations of building code, plumbing code, housing regulations, health regulations, food regulations, and fire code, were constitutionally impermissible as to unconvicted pretrial detainees incarcerated at such jail. *Campbell v. McGruder*, 416 F. Supp. 100 (D.D.C. 1975), aff'd as modified, 580 F.2d 521 (D.C. Cir. 1978).

Court order protecting specific entitlements. — Appellate court approved orders of federal district court ensuring that pretrial detainees at the District of Columbia jail would be provided a minimum space of their own, a regular change of linen and outer clothing, daily recreation, prompt psychiatric care, carefully regulated use of restraints and a rational security classification to prevent excessively harsh confinement and possibly to prepare the way for contact visits. *Campbell v. McGruder*, 580 F.2d 521 (D.C. Cir. 1978).

Religious services. — Allowing some religious groups to hold religious services at reformatory and jail at public expense while denying that right to another, discriminated against a prisoner of the other faith in violation of orders requiring prison officials to make facilities available without regard to race or religion. *Fulwood v. Clemmer*, 206 F. Supp. 370 (D.D.C. 1962).

Prison officials' action fixing price of local telephone calls held exempt from antitrust laws. — In an antitrust action by prison inmates against prison officials in their official capacities, the officials' action in fixing the price of outgoing local telephone calls was

held exempt from the antitrust laws where the rate fixed was not unreasonable and such a charge could well have been a proper means of defraying the cost of administering the prison telephone system or regulating the use thereof. *Jackson v. Taylor*, 539 F. Supp. 593 (D.D.C. 1982), *aff'd*, 713 F.2d 865 (D.C. Cir. 1983).

Cited in *Gaither v. District of Columbia*, App. D.C., 333 A.2d 57 (1975); *Gale v. United States*, App. D.C., 391 A.2d 230 (1978), cert. denied, 439 U.S. 1133, 99 S. Ct. 1057, 59 L. Ed. 2d 96 (1979); *Redwood v. Council of D.C.*, 679 F.2d 931 (D.C. Cir. 1982); *Doe v. District of*

Columbia, 697 F.2d 1115 (D.C. Cir. 1983); *Norris v. Freeman*, App. D.C., 497 A.2d 1108 (1985); *Ross v. United States*, 641 F. Supp. 368 (D.D.C. 1986); *Pitts v. Thornburgh*, 866 F.2d 1450 (D.C. Cir. 1989); *Lee v. Thornburgh*, 877 F.2d 1053 (D.C. Cir. 1989); *District of Columbia Dep't of Cors. v. Teamsters Union Local 246*, App. D.C., 554 A.2d 319 (1989); *Millard v. Roach*, App. D.C., 631 A.2d 1217 (1993); *Pryor-El v. Kelly*, 892 F. Supp. 261 (D.D.C. 1995); *Abdullah v. Roach*, App. D.C., 668 A.2d 801 (1995).

§ 24-443. Transfer of duties, powers and materials of Board of Public Welfare.

With respect to the said institutions, the Mayor of the District of Columbia shall succeed to all the powers and authority, and to all the duties and obligations vested in or imposed by law upon the Board of Public Welfare of the District of Columbia. Where powers are vested in or duties are imposed by existing law upon the Director of Public Welfare of the District of Columbia with respect to said institutions, such powers and duties are transferred to and shall be exercised by the Director of the Department of Corrections. The officers and employees and all plant and equipment, official records, furniture, and supplies of the said institutions are hereby transferred to the Department of Corrections. (June 27, 1946, 60 Stat. 321, ch. 507, § 3; 1973 Ed., § 24-443.)

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

Board of Public Welfare abolished. — The Board of Public Welfare was abolished and the functions thereof transferred to the Board of Commissioners of the District of Columbia by Reorganization Plan No. 5 of 1952. The executive functions of the Board of Commissioners

were transferred to the Commissioner of the District of Columbia by § 401 of Reorganization Plan No. 3 of 1967. Reorganization Order No. 58 as amended, redesignated as Organization Order No. 140 and amended, established under the direction and control of a Commissioner, a Department of Public Welfare, headed by a Director with the purpose of planning, implementing and directing public welfare programs. Reorganization Order No. 58 provided that the previously existing Board of Public Welfare would be abolished. That Order also transferred specified functions of the former Board to the Department of Public Health and the Department of Public Welfare. Functions of the Department of Public Welfare and of the Department of Public Health as set forth in Organization Order Nos. 140 and 141, respectively, were transferred to the Director of the Department of Human Resources by Commissioner's Order No. 69-96, dated March 7, 1969, as amended by Commissioner's Order No. 70-83, dated March 6, 1970. The Department of Human Resources was replaced by the Department of Human Services by Reorganization Plan No. 2 of 1979, dated February 21, 1980.

Cited in *Matthews v. Washington*, 424 F. Supp. 97 (D.D.C. 1976); *Meadows v. Palmer*, 775 F.2d 1193 (D.C. Cir. 1985).

§ 24-444. Continuance of regulations.

All rules and regulations promulgated by the Board of Public Welfare with respect to said institutions shall continue in force and effect until amended or repealed by the Council of the District of Columbia. (June 27, 1946, 60 Stat. 321, ch. 507, § 4; 1973 Ed., § 24-444.)

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 402(213) of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to the District of Columbia Council, subject to the right of the Commissioner as provided in § 406 of the Plan. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

Board of Public Welfare abolished. — The Board of Public Welfare was abolished and the functions thereof transferred to the Board of Commissioners of the District of Columbia by

Reorganization Plan No. 5 of 1952. The executive functions of the Board of Commissioners were transferred to the Commissioner of the District of Columbia by § 401 of Reorganization Plan No. 3 of 1967. Reorganization Order No. 58 as amended, redesignated as Organization Order No. 140 and amended, established under the direction and control of a Commissioner, a Department of Public Welfare, headed by a Director with the purpose of planning, implementing and directing public welfare programs. Reorganization Order No. 58 provided that the previously existing Board of Public Welfare would be abolished. That Order also transferred specified functions of the former Board to the Department of Public Health and the Department of Public Welfare. Functions of the Department of Public Welfare and of the Department of Public Health as set forth in Organization Order Nos. 140 and 141, respectively, were transferred to the Director of the Department of Human Resources by Commissioner's Order No. 69-96, dated March 7, 1969, as amended by Commissioner's Order No. 70-83, dated March 6, 1970. The Department of Human Resources was replaced by the Department of Human Services by Reorganization Plan No. 2 of 1979, dated February 21, 1980.

§ 24-445. Continuance of prior contracts; prior appropriations.

No contract for services or supplies made by the Board pursuant to authority granted to it by law shall be invalidated by this enactment and the unexpended balances of all appropriations heretofore or hereafter made for the Board with respect to said institutions shall become available for use by the Department of Corrections under the direction of the Mayor of the District of Columbia. (June 27, 1946, 60 Stat. 321, ch. 507, § 5; 1973 Ed., § 24-445.)

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners

under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to

§ 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

Board of Public Welfare abolished. — The Board of Public Welfare was abolished and the functions thereof transferred to the Board of Commissioners of the District of Columbia by Reorganization Plan No. 5 of 1952. The executive functions of the Board of Commissioners were transferred to the Commissioner of the District of Columbia by § 401 of Reorganization Plan No. 3 of 1967. Reorganization Order No. 58 as amended, redesignated as Organization Order No. 140 and amended, established under the direction and control of a Commissioner, a Department of Public Welfare, headed by a Director with the purpose of planning, implementing and directing public welfare pro-

grams. Reorganization Order No. 58 provided that the previously existing Board of Public Welfare would be abolished. That Order also transferred specified functions of the former Board to the Department of Public Health and the Department of Public Welfare. Functions of the Department of Public Welfare and of the Department of Public Health as set forth in Organization Order Nos. 140 and 141, respectively, were transferred to the Director of the Department of Human Resources by Commissioner's Order No. 69-96, dated March 7, 1969, as amended by Commissioner's Order No. 70-83, dated March 6, 1970. The Department of Human Resources was replaced by the Department of Human Services by Reorganization Plan No. 2 of 1979, dated February 21, 1980.

§ 24-446. Charge against United States for care of convicts.

The cost of the care and custody of persons confined in the said institutions charged with or convicted of offenses under any law of the United States not applicable exclusively to the District of Columbia shall be charged against the department or agency of the United States primarily responsible for the care and custody of such persons in quarterly accounts to be rendered by the Director of the Department of Finance and Revenue. The amount to be charged for such care and custody shall be ascertained by multiplying the average daily number of such persons so confined during the quarter by the per capita cost for the same quarter for all prisoners in the institution where confined, excluding expenses of construction or extraordinary repair of buildings. The sum so derived shall be credited to the current appropriation for the maintenance and operation of such institutions. (June 27, 1946, 60 Stat. 321, ch. 507, § 6; 1973 Ed., § 24-446.)

Disbursing Office abolished. — The Disbursing Office was abolished and the functions thereof transferred to the Board of Commissioners of the District of Columbia by Reorganization Plan No. 5 of 1952. Reorganization Order No. 3 of the Board of Commissioners, dated August 28, 1952, established under the direction and control of the Board of Commissioners a Department of General Administration headed by a Director. The Order transferred to the Director of General Administration all of the functions of the abolished Office. Reorganization Order No. 20 established the Finance Office in the Department of General Administration. Included in the Finance Office were an Office of the Assessor, the Office of the Collector of Taxes, the Disbursing Office, and the Accounting Office headed by an

Accounting Officer. The executive functions of the Board of Commissioners were transferred to the Commissioner of the District of Columbia by § 401 of Reorganization Plan No. 3 of 1967. Reorganization Order No. 3 was revoked by Organization Order No. 3 of the Commissioner of the District of Columbia, dated December 13, 1967. Organization Order No. 3 established within the newly created Department of General Administration, a Finance Office and prescribed the functions thereof. These functions were subsequently transferred to the Director of the Department of Finance and Revenue by Commissioner's Order No. 69-96, dated March 7, 1969.

Cited in *Cannon v. United States*, 645 F.2d 1128 (D.C. Cir. 1981).

§ 24-447. Advances to Director, Department of Corrections.

Omitted.

Temporary addition of sections. — Sections 2 through 5 of D.C. Law 11-91 added new sections to read as follows:

“§ 2. Definitions.

For the purposes of this act, the term:

(1) ‘Applicant’ means all persons who have filed any written employment application forms to work at the Department.

(2) ‘Council’ means the Council of the District of Columbia.

(3) ‘Department’ means the District of Columbia Department of Corrections.

(4) ‘Director’ means the Director of the District of Columbia Department of Corrections.

(5) ‘High Potential Risk employee’ (‘HPR employee’) means any Department employee who has inmate care and custody responsibilities or who works within a correctional institution, including any employees and managers who are carried in a law enforcement retirement status.

(6) ‘Law enforcement retirement status’ means any employee who contributes to the 7.5% retirement status category.

(7) ‘Post-accident employee’ means any Department employee who, while on duty, is involved in a vehicular or other type of accident resulting in personal injury or property damage, or both.

(8) ‘Random testing’ means drug or alcohol testing taken by Department employees at an unspecified time for the purposes of determining whether any Department employees have used drugs or alcohol and, as a result, are unable to satisfactorily perform their employment duties.

(9) ‘Reasonable suspicion’ means a belief by a supervisor that an employee is under the influence of an illegal substance or alcohol to the extent that the employee’s ability to perform his or her job is impaired. Supervisors shall be trained in substance abuse recognition and shall receive a second opinion from another supervisor prior to making a reasonable suspicion referral.

§ 3. Employee testing.

(a) The following Department employees shall be tested for drug and alcohol use:

(1) Applicants;

(2) Those employees who have had a reasonable suspicion referral;

(3) Post-accident employees, as soon as reasonably possible after the accident; and

(4) HPR employees.

(b) Only HPR employees shall be subject to random testing.

(c) Employees shall be given at least a 30-day written notice from the effective date of the Department of Corrections Employee Mandatory Drug and Alcohol Testing Emergency Act of 1995 that the Department is implementing a drug and alcohol testing program and shall be given an opportunity to seek treatment. Following the effective date of the Department of Corrections Employee Mandatory Drug and Alcohol Testing Emergency Act of 1995, the Department shall procure a testing vendor and testing shall be implemented as described herein.

§ 4. Testing methodology.

(a) Testing shall be performed by an outside contractor. The contractor shall be a laboratory certified by the United States Department of Health and Human Services (‘HHS’) to perform job related drug and alcohol forensic testing.

(b) For random testing, the contractor shall come on-site to the Department’s institutions and shall collect urine specimens and split the samples. The contractor shall perform enzyme-multiplied-immunoassay technique (‘EMIT’) testing on one sample and store the split sample. Any positive EMIT test shall then be confirmed by the contractor using gas chromatography/mass spectrometry (‘GCMS’) methodology.

(c) Any Department employee found to have a confirmed positive urinalysis shall be notified of the result. The employee may then authorize that the stored sample be sent to another HHS certified laboratory of his or her choice, at his or her expense, for secondary GCMS confirmation.

(d) Reasonable suspicion and post-accident employee testing shall follow the same procedures set forth in subsections (a) through (c) of this section. In such cases, the employee shall be escorted by a supervisor to the contractor’s test site for specimen collection or a breathalyzer.

(e) Any Department employee who operates a motor vehicle in the District of Columbia shall be deemed to have given his or her consent, subject to conditions in this act, to the testing of the person’s urine or breath for the purpose of determining drug or alcohol content whenever a supervisor has reasonable suspicion or a police officer arrests such person for a violation of the law and has reasonable grounds to believe that such person was operating or in physical control of a motor vehicle within the District while that person’s breath contained .10% or more, by weight, of alcohol, while under the influence of an intoxicating liquor or any

drug or any combination thereof, or while the ability to operate a motor vehicle was impaired by the consumption of an intoxicating beverage.

(f) A breathalyzer shall be deemed positive by the Department's testing contractor if the contractor determines that 1 milliliter of the employee's breath (consisting of substantially alveolar air) contains .48 micrograms or more of alcohol. A positive breathalyzer test shall be grounds for termination of employment in accordance with the District of Columbia Government Comprehensive Merit Personnel Act of 1978, effective March 3, 1979 (D.C. Law 2-139; D.C. Code § 1-601.1 et seq.).

§ 5. Procedure and employee impact.

The drug testing policy shall be issued in advance to inform employees and allow them the opportunity to seek treatment. Thereafter, any confirmed positive test results or a refusal to submit to the test shall be grounds for termination of employment in accordance with the District of Columbia Government Comprehensive Merit Personnel Act of 1978, effective March 3, 1979 (D.C. Law 2-139; D.C. Code § 1-601.1 et seq.). This testing program is for all employees, including management, and shall be implemented as a single Department program. The results of a random test may not be turned over to any law enforcement agency without the employee's written consent."

Section 7(b) of D.C. Law 11-91 provided that the act shall expire after the 225th day of its

having taken effect or on the effective date of the Department of Corrections Employee Mandatory Drug and Alcohol Testing Act of 1995, whichever occurs first.

Emergency act amendments. — For temporary establishment of a mandatory drug and alcohol testing policy for District of Columbia Department of Corrections employees, to ensure security and a safe working environment at the District's correctional facilities, see §§ 2 through 5 of the Department of Corrections Employee Mandatory Drug and Alcohol Testing Emergency Act of 1995 (D.C. Act 11-167, November 28, 1995, 42 DCR 6805) and §§ 2 through 5 of the Department of Corrections Employee Mandatory Drug and Alcohol Testing Congressional Review Emergency Act of 1996 (D.C. Act 11-208, February 14, 1996, 43 DCR 794).

Legislative history of Law 11-91. — Law 11-91, the "Department of Corrections Employee Mandatory Drug and Alcohol Testing Temporary Act of 1995," was introduced in Council and assigned Bill No. 11-461. The Bill was adopted on first and second readings on November 7, 1995, and December 5, 1995, respectively. Signed by the Mayor on December 18, 1995, it was assigned Act No. 11-174 and transmitted to both Houses of Congress for its review. D.C. Law 11-91 became effective on February 27, 1996.

Subchapter III. Correctional Industries Fund.

§ 24-451. Establishment of Fund.

There is hereby established in the Treasury a revolving fund for the government of the District of Columbia to be known as the Correctional Industries Fund (hereinafter referred to as the "Fund") to replace the Working Capital Fund created by § 47-131. (Oct. 3, 1964, 78 Stat. 1000, Pub. L. 88-622, § 1; 1973 Ed., § 24-451.)

Section references. — This section is referred to in § 24-455.

References in text. — The § 47-131c, referred to at the end of this section, was repealed by the Act of October 3, 1964, 78 Stat. 1001,

Pub. L. 88-622, § 6. Former § 47-130c of the 1973 Edition concerning the establishment of the General Fund and special accounts, and the audit of closed special accounts is codified at § 47-131.

§ 24-452. Availability of Fund for rehabilitation of convicts.

The Fund shall be available without fiscal-year limitation and shall be used for the performance of such services and the production of such commodities as, in the judgment of the Mayor of the District of Columbia (hereinafter referred to as "Mayor"), will contribute to the rehabilitation, knowledge, and skill in trades and occupations of inmates of the institutions in the Department

of Corrections of the District of Columbia, thereby equipping them with a means of livelihood upon release. The accounting for the fund shall be maintained on the accrual basis, including provision for employees' accrued annual leave and depreciation of fixed assets, and financial reports shall be prepared on the basis of such accounting. (Oct. 3, 1964, 78 Stat. 1000, Pub. L. 88-622, § 2; 1973 Ed., § 24-452.)

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and

Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

§ 24-453. Sale of products and services; deposit of receipts; use.

(a) Products and services produced by utilization of the Fund may be purchased, at fair market prices as determined by the Mayor, by any department or agency of the District of Columbia government, the federal government, any state or subdivision of a state, or any commonwealth, territory, or possession of the United States, or any not-for-profit organization, except as provided in subsection (b) of this section. Receipts from the sales of products and services shall be deposited to the credit of the Fund. The Fund shall be used for all necessary expenses directly related to the Fund, including personal services; payments to inmates, or payments to their dependents, of such pecuniary earnings as the Mayor deems proper; purchase, repair, and maintenance of equipment; purchase of raw materials and supplies; payment of dues and expenses of attendance at meetings and conventions, as approved by the Mayor; maintenance and repair of buildings used for Fund purposes; alteration of existing facilities used for Fund purposes where the total project cost does not exceed \$10,000; and, within the limits of amounts provided in annual appropriation acts, acquisition and improvement of real property.

(b) Departments or agencies of the District of Columbia shall utilize the products and services produced under this subchapter if the products and services satisfy agency requirements, including price, delivery, and other specifications. (Oct. 3, 1964, 78 Stat. 1000, Pub. L. 88-622, § 3; 1973 Ed., § 24-453; Sept. 26, 1995, D.C. Law 11-52, § 102, 42 DCR 3684.)

Effect of amendments. — D.C. Law 11-52 redesignated the existing text as (a); added "or any not-for-profit organization . . . this section" at the end of the first sentence of (a); and added (b).

Temporary amendment of section. — Section 102 of D.C. Law 10-253 amended this

section to read as follows:

"(a) Products and services produced by utilization of the Fund may be purchased, at fair market prices as determined by the Mayor, by any department or agency of the District of Columbia government, the federal government, any state or subdivision of a state or any

commonwealth, territory, or possession of the United States or any not-for-profit organization, except as provided in subsection (b) of this section. Receipts from the sales of products and services shall be deposited to the credit of the Fund. The Fund shall be used for all necessary expenses directly related to the Fund, including personal services; payments to inmates, or payments to their dependents, of such pecuniary earnings as the Mayor deems proper; purchase, repair, and maintenance of equipment; purchase of raw materials and supplies; payment of dues and expenses of attendance at meetings and conventions, as approved by the Mayor; maintenance and repair of buildings used for Fund purposes; alteration of existing facilities used for Fund purposes where the total project cost does not exceed \$10,000; and, within the limits of amounts provided in annual appropriation acts, acquisition and improvement of real property.

(b) Departments or agencies of the District of Columbia shall utilize the products and services produced under this act if the products and services satisfy agency requirements, including price, delivery, and other specifications."

Section 1101 of D.C. Law 10-253 provided that section 102 shall apply upon the enactment by Congress of an amendment to 18 U.S.C. § 1761(b) to authorize prison industry sales to not-for-profit organizations.

Section 1301(b) of D.C. Law 10-253 provided that the act shall expire on the 225th day of its having taken effect or upon the effective date of the Multiyear Budget Spending Reduction and Support Act of 1995, whichever occurs first.

Emergency act amendments. — For temporary amendment of section, see § 102 of the Multiyear Budget Spending Reduction and Support Emergency Act of 1994 (D.C. Act 10-389, December 29, 1994, 42 DCR 197).

D.C. Act 10-389 provided that section 102 shall apply upon the enactment by Congress of an amendment to 18 U.S.C. § 1761(b) to authorize prison industry sales to not-for-profit organizations.

For temporary amendment of section, see § 102 of the Omnibus Budget Support Congressional Review Emergency Act of 1995 (D.C. Act 11-124, July 27, 1995, 42 DCR 4160).

Section 1601 of the Omnibus Budget Support Congressional Review Emergency Act of 1995 (D.C. Act 11-124, July 27, 1995, 42 DCR 4160) provides that § 102 of that act shall apply upon

the enactment by Congress of an amendment to 18 U.S.C. 1761(b) to authorize prison industry sales to not-for-profit organizations.

Legislative history of Law 10-253. — Law 10-253, the "Multiyear Budget Spending Reduction and Support Temporary Act of 1994," was introduced in Council and assigned Bill No. 16-857. The Bill was adopted on first and second readings on December 21, 1994, and January 3, 1995, respectively. Deemed approved with the signature of the Mayor on January 27, 1995, it was assigned Act No. 10-401 and transmitted to both Houses of Congress for its review. D.C. Law 10-253 became effective on March 23, 1995.

Legislative history of Law 11-52. — Law 11-52, the "Omnibus Budget Support Act of 1995," was introduced in Council and assigned Bill No. 11-218, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on April 19, 1995, and June 6, 1995, respectively. Signed by the Mayor on July 13, 1995, it was assigned Act No. 11-94 and transmitted to both Houses of Congress for its review. D.C. Law 11-52 became effective on September 26, 1995.

Application of § 102 of D.C. Law 11-52. — Section 1601 of D.C. Law 11-52 provided that § 102 of the act shall apply upon the enactment by Congress of an amendment to 18 U.S.C. 1761(b) to authorize prison industry sales to not-for-profit organizations.

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

§ 24-454. Annual report; disposition of funds.

Not later than 6 months after the end of each fiscal year, the Director of the Department of Corrections of the District of Columbia shall submit to the Mayor a report of the financial condition of the Fund and the results of

operations for such fiscal year. The Mayor shall review such report and determine the disposition to be made of realized profits. The Mayor is empowered to authorize retention of accumulated profits for the purpose of acquiring or improving personal property, or to increase working capital to planned operating levels. In no case, however, shall such profits retained for these purposes increase the net worth of the Fund beyond \$2,500,000. The Mayor is also empowered to authorize retention of accumulated profits for payments to inmates other than those employed in industrial operations, or for payments to their dependents, of such amounts as the Mayor deems proper. Accumulated profits not retained or used for the aforementioned purposes, or which exceed the limitation imposed, shall be deposited to the credit of the general revenues of the District of Columbia. (Oct. 3, 1964, 78 Stat. 1000, Pub. L. 88-622, § 4; 1973 Ed., § 24-454.)

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and

Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

§ 24-455. Transfer of assets.

All assets except buildings and all liabilities or other obligations which at the time of enactment of this Act are components of the Working Capital Fund, Workhouse and Reformatory, as created by Public Law 493, 79th Congress, approved July 9, 1946 (60 Stat. 514, ch. 544, § 1), shall be transferred to the Fund created by § 24-451. (Oct. 3, 1964, 78 Stat. 1001, Pub. L. 88-622, § 5; 1973 Ed., § 24-455.)

References in text. — “This Act” referred to in this section is the Act of October 3, 1964, 78 Stat. 1001, Pub. L. 88-662.

Subchapter IV. Work Release Program.

§ 24-461. Authority granted to establish program.

There is hereby authorized to be established in the District of Columbia a work release program under which any person who is: (1) convicted of a misdemeanor or of violating a municipal regulation or an act of Congress in the nature of a municipal regulation, and is sentenced to serve in a penal institution a term of 1 year or less; (2) imprisoned for nonpayment of a fine, or for contempt of court; or (3) committed to jail after revocation of probation pursuant to § 24-104, may, whenever the judge of the sentencing court is satisfied that the ends of justice and the best interests of society as well as of

such person would be subserved thereby or whenever after service by the person of one-third of his or her sentence, the Board of Parole is satisfied that the ends of justice and the best interests of society as well as of the sentenced person would be served thereby, be granted the privilege of a work release for the purpose of working at his employment or seeking employment. Such a work release privilege may also be granted, in the discretion of the sentencing court, whenever there exist such special circumstances as merit the granting of the privilege. As used in this subchapter, the word “sentence” and its derivatives shall be construed to include sentencing, imprisonment, and commitment as referred to in this section. (Nov. 10, 1966, 80 Stat. 1519, Pub. L. 89-803, § 2; 1973 Ed., § 24-461; Mar. 10, 1983, D.C. Law 4-202, § 5, 30 DCR 173.)

Cross references. — As to ineligibility of prisoner employed in free community to receive unemployment compensation, see § 46-110.

Section references. — This section is referred to in § 24-462.

Legislative history of Law 4-202. — Law 4-202, the “District of Columbia Sentencing Improvements Act of 1982,” was introduced in Council and assigned Bill No. 4-120, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on November 16, 1982, and December 14, 1982, respectively. Signed by the Mayor on December 28, 1982, it was assigned Act No. 4-286 and transmitted to both Houses of Congress for its review.

No liberty interest in work release. — While a Department of Corrections’ order contained rigorous eligibility criteria, it lacked mandatory language requiring officials to admit prisoners to the furlough program even when they had met those criteria; the District of Columbia and the Department of Corrections have not created a liberty interest in the work furlough program. *Williams v. Moore*, 899 F. Supp. 711 (D.D.C. 1995).

Applicability of Work Release Act. — The District of Columbia Work Release Act (this subchapter) applies only to 3 enumerated classes of persons imprisoned for minor of-

fenses, not to imprisoned felons; as to the latter, work release is granted at the discretion of the Attorney General under the provisions of federal statute. *Contee v. United States*, App. D.C., 315 A.2d 149 (1974).

Obligation of court under this section and § 24-463. — A reading of this section and § 24-463 together suggests that a court has the obligation to consider the interests of society as well as those of the offender and to frame the conditions of work release accordingly. *United States v. Davidson*, 110 WLR 217 (Super. Ct. 1982).

Payment of restitution or reparation permissible condition for release. — The reduction of a sentence from incarceration to work release may be conditioned on the payment of restitution or reparation. *United States v. Davidson*, 110 WLR 217 (Super. Ct. 1982).

A trial court may grant work release conditioned upon the payment of restitution. *Davidson v. United States*, App. D.C., 467 A.2d 1282 (1983).

Cited in *Green v. United States*, 481 F.2d 1140 (D.C. Cir. 1973); *United States v. Ellerbee*, App. D.C., 481 A.2d 473 (1984); *United States v. Brown*, 115 WLR 1821 (Super. Ct. 1987); *Twelve John Does v. District of Columbia*, 841 F.2d 1133 (D.C. Cir. 1988).

§ 24-462. Recommendations; order of court or Board of Parole required.

At the time of imposition of sentence, or at any time subsequent thereto, the probation officers of the courts or the Director, Department of Corrections of the District of Columbia, may recommend to, or the person sentenced may request, the sentencing court that such person be granted the privilege of a work release. No person shall be given work release privileges except by order of the sentencing court, or the Board of Parole pursuant to § 24-461. (Nov. 10, 1966, 80 Stat. 1519, Pub. L. 89-803, § 3; 1973 Ed., § 24-462; Mar. 10, 1983, D.C. Law 4-202, § 6, 30 DCR 173.)

Legislative history of Law 4-202. — See note to § 24-461.

Placement in work release program is available only by court order. *Armstead v. United States*, App. D.C., 310 A.2d 255 (1973).

Trial court may grant work release conditioned upon payment of restitution. *Davidson v. United States*, App. D.C., 467 A.2d 1282 (1983).

Department of Corrections is not privileged to interpret ambiguous order of trial judge as authorizing work release when order

does not specifically so provide. *Armstead v. United States*, App. D.C., 310 A.2d 255 (1973).

Sentence did not constitute specific court order. — Misdemeanant's sentence of "6 months with narcotic treatment in vocational rehabilitation" did not constitute explicit court order necessary for valid placement of misdemeanor in work release program. *Armstead v. United States*, App. D.C., 310 A.2d 255 (1973).

Cited in *Campbell v. McGruder*, 580 F.2d 521 (D.C. Cir. 1978).

§ 24-463. Conditions for release.

The sentencing court shall provide in its original order of commitment or in a modification thereof the terms and conditions under which a person granted work release privileges may be released from actual custody during the time necessary to proceed to his place of employment or other authorized places, perform specified activities, and return to a place of confinement designated by the Director, Department of Corrections. (Nov. 10, 1966, 80 Stat. 1519, Pub. L. 89-803, § 4; 1973 Ed., § 24-463.)

Obligation of court under this section and § 24-461. — A reading of § 24-461 and this section together suggests that a court has the obligation to consider the interests of society as well as those of the offender and to frame the conditions of work release accordingly. *United States v. Davidson*, 110 WLR 217 (Super. Ct. 1982).

Payment of restitution or reparation permissible condition for release. — The reduction of a sentence from incarceration to work release may be conditioned on the payment of restitution or reparation. *United States v. Davidson*, 110 WLR 217 (Super. Ct. 1982).

Trial court may grant work release conditioned upon payment of restitution. *Davidson v. United States*, App. D.C., 467 A.2d 1282 (1983).

Placement in work release program is available only by court order. *Armstead v. United States*, App. D.C., 310 A.2d 255 (1973).

Department of Corrections is not privileged to interpret ambiguous order of trial judge as authorizing work release when order does not specifically so provide. *Armstead v. United States*, App. D.C., 310 A.2d 255 (1973).

Sentence did not constitute explicit court order. — Misdemeanant's sentence of "6 months with narcotic treatment in vocational rehabilitation" did not constitute explicit court order necessary for valid placement of misdemeanor in work release program. *Armstead v. United States*, App. D.C., 310 A.2d 255 (1973).

Cited in *Green v. United States*, 481 F.2d 1140 (D.C. Cir. 1973).

§ 24-464. Regulations; individual plans.

The Council of the District of Columbia is authorized to promulgate from time to time such rules and regulations as it deems necessary for the administration by the Department of Corrections of the work release program. Subject to the terms and conditions prescribed in the order of the sentencing court, the Mayor of the District of Columbia is authorized to prepare an individual plan to meet the specific needs of each prisoner granted the privilege of a work release. (Nov. 10, 1966, 80 Stat. 1519, Pub. L. 89-803, § 5; 1973 Ed., § 24-464.)

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts

Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 402(426) of Reorganization Plan No. 3 of 1967 (see Reor-

ganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to the District of Columbia Council, subject to the right of the Commissioner as provided in § 406 of the Plan. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of

Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

§ 24-465. Suspension of work release privilege; violations of work release plan.

(a) The Director, Department of Corrections, may suspend the work release privilege of a prisoner for a period not to exceed 5 successive days for any breach of discipline or infraction of institution regulations. The Court may revoke the work release privilege at any time, either upon its own motion or upon recommendation of the Director, Department of Corrections.

(b) Any prisoner who wilfully fails to return at the time and to the place of confinement designated in his work release plan shall be fined not more than \$300 or imprisoned not more than 90 days, or both, such sentence of imprisonment to run consecutively with the remainder of previously imposed sentences. All prosecutions for violation of this subsection shall be in the Superior Court of the District of Columbia upon information filed by the Corporation Counsel of the District of Columbia or any of his assistants. (Nov. 10, 1966, 80 Stat. 1519, Pub. L. 89-803, § 6; July 29, 1970, 84 Stat. 570, Pub. L. 91-358, title I, § 155(a); 1973 Ed., § 24-465.)

Cross references. — As to rewards for apprehension of conditional release and parole violators, see § 24-426.

Subsection (b) does not establish exclusive penalty for a work release misdemeanor's failure to return to a correctional facility, and such a violation is also subject to prosecution under the general prison break statute, § 22-2601. *Gonzalez v. United States*, App. D.C., 498 A.2d 1172 (1985).

Nothing in the legislative history of subsection (b) compels the conclusion that this provision was enacted with the intent to preempt or detract from other preexisting authority to prosecute prison escape cases. *Gonzalez v. United States*, App. D.C., 498 A.2d 1172 (1985).

Leaving halfway house constituted escape from penal institution. — Misdemean-

ant who was placed in halfway house for participation in work release program due to administrative error rather than by court order required for valid placement, and who left and failed to return to halfway house, was properly prosecuted under § 22-2601 rather than this section. *Armstead v. United States*, App. D.C., 310 A.2d 255 (1973).

Defendants, who in course of serving sentences for felonies were transferred to a halfway house, were guilty of escape from penal institution when they left the halfway house and did not return. *United States v. Venable*, App. D.C., 316 A.2d 857 (1974).

Cited in *Wright v. United States*, App. D.C., 315 A.2d 839 (1974); *United States v. Gray*, 115 WLR 265 (Super. Ct. 1987).

§ 24-466. Trust fund for earnings; disbursements.

The Mayor is authorized to include in individual work release plans provisions for the collection of the wages, salary, earnings, and other income of each gainfully employed prisoner when paid, or require that the same be surrendered when received, less payroll deductions required or authorized by law, and to deposit the amount so received in a trust fund account in the Treasury of the United States. Such wages, salary, or earnings in the hands of

either the employer or the Mayor during such prisoner's terms shall not be subject to garnishment or attachment. The Mayor is further authorized in individual work release plans to provide for disbursements from the trust fund account established under this section for any or all of the following purposes: (1) the payment of an amount not to exceed the lesser of 20% of the prisoner's earnings, or \$4 per day, as the cost of his room and board; (2) necessary travel expenses to and from work or other business and incidental expenses of the prisoner; (3) support of the prisoner's dependents, if any; (4) support of minor children pursuant to court order; (5) payment of court fines or forfeitures; or (6) payment, either in full or ratably, of the prisoner's debts which have been acknowledged by him in writing or have been reduced to judgment. The balance of such earnings, if any there be after payments therefrom for the foregoing purposes, shall be paid to the prisoner upon the completion of the period during which he is subject to confinement. (Nov. 10, 1966, 80 Stat. 1520, Pub. L. 89-803, § 7; 1973 Ed., § 24-466.)

Section references. — This section is referred to in § 24-467.

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and

Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

Cited in United States v. Davidson, 110 WLR 217 (Super. Ct. 1982); Davidson v. United States, App. D.C., 467 A.2d 1282 (1983).

§ 24-467. Support of dependents.

Payments for support pursuant to § 24-466 shall be made through the clerks of the respective courts. In cases where there is no outstanding court order of support or judgment against the prisoner, the Director, Department of Public Welfare, or his designated agent, shall, after investigation, report to the Mayor the amounts deemed necessary for support of the prisoner's dependents. (Nov. 10, 1966, 80 Stat. 1520, Pub. L. 89-803, § 8; 1973 Ed., § 24-467.)

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and

Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

Transfer of functions. — Reorganization Order No. 58 as amended, redesignated as Organization Order No. 140 and amended, established under the direction and control of a Commissioner, a Department of Public Welfare, headed by a Director with the purpose of planning, implementing and directing public wel-

fare programs. Reorganization Order No. 58 provided that the previously existing Board of Public Welfare would be abolished. That Order also transferred specified functions of the former Board to the Department of Public Health and the Department of Public Welfare. Functions of the Department of Public Welfare and of the Department of Public Health as set forth in Organization Order Nos. 140 and 141,

respectively, were transferred to the Director of the Department of Human Resources by Commissioner's Order No. 69-96, dated March 7, 1969, as amended by Commissioner's Order No. 70-83, dated March 6, 1970. The Department of Human Resources was replaced by the Department of Human Services by Reorganization Plan No. 2 of 1979, dated February 21, 1980.

§ 24-468. Designation of Mayor as representative of Attorney General.

The Attorney General of the United States may, in order to carry out the purposes of this subchapter, designate the Mayor as his authorized representative to perform the functions vested in him by § 24-425. (Nov. 10, 1966, 80 Stat. 1520, Pub. L. 89-803, § 9; 1973 Ed., § 24-468.)

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and

the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

The Attorney General has declined to take advantage of the provisions of this section, and has retained the power to assess the availability, suitability, and appropriateness of the District of Columbia Department of Corrections, thereby thwarting any efforts on behalf of the District to declare all of its facilities closed to new inmates in the absence of court determinations to that effect. *United States v. District of Columbia*, 703 F. Supp. 982 (D.D.C. 1988), *aff'd* as modified, 897 F.2d 1152 (D.C. Cir. 1990).

§ 24-469. "Mayor" defined; authority of Commissioners.

(a) As used in this subchapter the term "Mayor" means the Mayor of the District of Columbia or his designated agents.

(b) Nothing in this subchapter shall be construed so as to affect the authority vested in the Commissioners by Reorganization Plan No. 5 of 1952 (66 Stat. 824). The performance of any function vested by this subchapter in the Commissioners or in any office or agency under the jurisdiction and control of said Commissioners may be performed by the Commissioners or may be delegated by said Commissioners in accordance with § 3 of such plan. (Nov. 10, 1966, 80 Stat. 1520, Pub. L. 89-803, § 10; 1973 Ed., § 24-469.)

References in text. — Reorganization Plan No. 5 of 1952, referred to in subsection (b) of this section, is set out in its entirety in Volume 1.

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts

Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and

Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and

the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

§ 24-470. Prisoner not agent, employee or servant of District.

Except when employed and paid by the District of Columbia for the performance of work for the District of Columbia government, no prisoner employed in the free community under the provisions of this subchapter shall, while working in such employment in the free community or going to or from such employment, be deemed to be an agent, employee, or servant of the District of Columbia government. (Nov. 10, 1966, 80 Stat. 1521, Pub. L. 89-803, § 12; 1973 Ed., § 24-470.)

Subchapter V. Resocialization Furlough Program.

§ 24-481. Definitions.

For the purposes of this subchapter:

(1) The term "Department" means the District of Columbia Department of Corrections.

(2) The term "Director" means the Director of the Department of Corrections, or his designated agent.

(3) The term "furlough" means any extension of the limits of the place of confinement of a sentenced prisoner for the purposes outlined in § 24-483, and when said purposes are in agreement with the goals of § 24-442 when the person sentenced is not escorted by a United States marshal or an officer or employee of the District of Columbia.

(4) The term "minimum custody status" means that status of an individual who:

(A) In the case of an individual who has been sentenced to serve for a definite number of years, is within 12 months of his earliest possible date of parole;

(B) In the case of an individual who has been sentenced to serve for a sentence of not less than a minimum period, has served for at least one-half of that minimum period;

(C) In the case of an individual who has been sentenced to serve for an indefinite period, has served for 12 months; or

(D) In the case of an individual who has been sentenced to serve for a definite period of less than 18 months has served for at least one-half of that period.

(5) The term "resident" means an individual confined, after conviction and sentencing, in an institution or facility of the District of Columbia operated by the Department of Corrections.

(6) The term “committee” means an institutional review committee established pursuant to § 24-486. (1973 Ed., § 24-481; Apr. 23, 1977, D.C. Law 1-130, § 2, 23 DCR 9694.)

Legislative history of Law 1-130. — Law 1-130, the “Resocialization Furlough Act of 1976,” was introduced in Council and assigned Bill No. 1-223, which was referred to the Committee on Public Safety. The Bill was adopted on first and second readings on July 20, 1976

and November 23, 1976, respectively. Enacted without signature by the Mayor on January 19, 1977, it was assigned Act No. 1-224 and transmitted to both Houses of Congress for its review.

§ 24-482. Authority to grant furloughs.

(a) The Mayor of the District of Columbia, or his designated agent, may grant a resocialization furlough to any eligible resident for the purposes specified in this subchapter and according to the procedures provided for in this subchapter. The decision to grant or deny a furlough shall not be made on the basis of rewarding a resident for good behavior nor for punishing misbehavior. Furloughs shall not be used to shorten sentences; any resident furloughed shall be considered, while on furlough, to still be in custody, and time spent on furlough shall be credited toward the remainder of his sentence.

(b) For the purposes of this subchapter, an eligible resident shall be any resident who:

(1) Has attained minimum custody status;

(2) Has demonstrated responsible attitudes and behavior in the institution or facility so that there is reasonable assurance that he will comply fully with the conditions of the furlough;

(3) Has received, where applicable, a favorable recommendation by the appropriate committee; and

(4) Is mentally, physically, and financially capable of completing the furlough without escort or assistance from any officer or employee of the Department after his release from the institution or facility.

(c) Any individual who is incarcerated in any institution or facility operated by the Department after being convicted of having violated either § 22-2401 (relating to first degree murder), § 22-2402 (relating to first degree murder), or § 22-2403 (relating to second degree murder), § 22-2801 (relating to rape), or § 22-3501 (relating to indecent acts with a minor) shall not be eligible for any furlough under the provisions of this subchapter, except where such individual is within 12 months of a firm release date.

(d) Any eligible resident who is within 12 months of a firm release date or who is participating in an approved work training or higher education program may be considered for 1 furlough per month. All other eligible residents may be considered for 1 furlough every 3 months. (1973 Ed., § 24-482; Apr. 23, 1977, D.C. Law 1-130, § 3, 23 DCR 9694.)

Legislative history of Law 1-130. — See note to § 24-481.

§ 24-483. Purposes of furloughs; furloughs over 12 hours.

(a) The Mayor, or his designated agent, may grant a furlough, except as provided in subsection (c) of this section, to any eligible resident:

(1) In order to visit the bedside of a dying relative, or to attend the funeral of a relative, in the Washington metropolitan area;

(2) Upon the recommendation of the institutional review committee, in order to call upon prospective employers in the Washington metropolitan area, enroll in an educational institution or program, obtain suitable housing prior to release, or to finalize parole supervision plans with an officer or employee of the Department; or

(3) Upon the recommendation of the institutional review committee, to participate in family and approved community, religious, or educational, social, civic, and recreational activities, when it is determined that such participation will directly facilitate the transition from life in the facility or institution to life in the community.

(b) The Mayor, or his designated agent, may grant a furlough for the purposes specified in paragraph (1) of subsection (a) outside of the Washington metropolitan area, so long as such furlough does not exceed 72 hours.

(c) The Mayor, or his designated agent, may grant a furlough to an eligible resident for longer than 12 hours, but for no longer than 72 hours, where he finds that, based on a report from the institutional review committee, such eligible resident:

(1) Has demonstrated complete institutional adjustment;

(2) Is strongly motivated to benefit from the program;

(3) Is considered to have exceptional potential for rehabilitation; and

(4) Will not, while on furlough, constitute a threat or danger to the community.

(d) For the purposes of this section, the term “relative” means a spouse, child (including a step-child, adopted child, or child to whom the resident, though not a natural parent, has acted in the place of a parent), parent (including a person who, though not a natural parent, has acted in the place of a parent), brother, or sister.

(e) In the event any eligible resident applies for a furlough for 1 of the reasons specified in paragraph (1) of subsection (a) of this section, verification of the death or seriousness of the illness, as the case may be, of the relative must be obtained from the attending physician, hospital physician, or funeral home director (as applicable), before such furlough may be granted. (1973 Ed., § 24-483; Apr. 23, 1977, D.C. Law 1-130, § 4, 23 DCR 9694.)

Section references. — This section is referred to in § 24-481.

Legislative history of Law 1-130. — See note to § 24-481.

§ 24-484. Procedures.

(a) Each caseworker or counselor on the staff of the Department who is assigned to investigate an application for a furlough shall: (1) verify the reasons given by the applicant for the furlough; (2) determine whether the furlough requested and the applicant meet the requirements of this subchap-

ter; and (3) ascertain whether the furlough will contribute to the attainment of the correctional goals of the applicant. If the caseworker or counselor finds that the request meets these criteria, and the provisions of this subchapter, then he shall prepare a memorandum recommending the granting of the furlough. Such memorandum shall be reviewed by the appropriate supervisory personnel and finally by the Mayor, or his designated agent. Each such memorandum shall contain the name of the resident concerned, his Department number, the crime for which he was sentenced, the reason for the requested furlough, all factual information (including its verification data), and a statement by the caseworker or counselor on how the furlough is expected to contribute to the attainment of the resident concerned correctional goals and the date of the last furlough granted to such resident.

(b) Each resident being released on furlough will be advised in writing of the conditions of his furlough and will be given a thorough explanation of such conditions. In addition, each resident will be advised that the wilful failure to remain within the extended limits of his confinement, or his failure to return to a designated place within the time prescribed may be deemed an escape, punishable by a fine of not more than \$5,000 or imprisonment for not longer than 5 years, or both. This furlough release authorization form shall be signed by the resident concerned, indicating his understanding of the conditions of the furlough and his willingness to comply with such conditions. Such form will also be signed by the person authorizing such furlough. The resident concerned will be given a copy of such form and instructed to keep it on his person at all times while on furlough.

(c) If a resident on furlough fails to return to a designated place within the time specified in the furlough authorization form signed by him, or if there is reason to believe that he has violated the conditions of his furlough after release, the Administrator shall immediately attempt to contact the resident in order to have him returned to the institution or facility from which he was released. If a furloughed resident cannot be located within 2 hours after the scheduled time for his return, he shall be deemed to be an escapee, subject to the appropriate actions taken under Departmental Order 5120.1A. (1973 Ed., § 24-484; Apr. 23, 1977, D.C. Law 1-130, § 5, 23 DCR 9694.)

Legislative history of Law 1-130. — See note to § 24-481.

§ 24-485. Records and reports.

(a) Residents being released on furlough shall be reported as “furloughed” on appropriate Departmental records and statistical forms, identifying such movement as a furlough. Because time spent on furlough is creditable toward the service of a sentence, such status will not preclude the earning of good time or pay.

(b) Each caseworker or counselor assigned to handle a furloughed resident will, upon the completion of each such furlough, prepare a brief report to include:

(1) The name and Department number of the furloughed resident to whom the report relates;

- (2) The purpose of the furlough being completed;
- (3) A statement of the results of the furlough, including an explanation of any unusual circumstances or events;
- (4) The reporter's assessment of the circumstances or events in relation to the resident's correctional goals; and
- (5) The dates of any previous furloughs granted, including the one to which the report relates.

(c) Copies of all executed furlough release authorization forms shall be kept in the office of the Administrator. Within 5 calendar days before the beginning of each month, the information on these forms (in digested form) will be reported to the designee of the Director. These reports will include:

- (1) The name and Department number of each resident who has been granted a furlough during the reporting period;
- (2) Sentence data relating to such resident, including his earliest release date;
- (3) The purpose of the furlough;
- (4) The beginning and ending dates of the furlough;
- (5) The name of the officer authorizing the furlough;
- (6) The number of furloughs previously granted to such resident; and
- (7) The total number of furloughs granted to all residents during the reporting period. (1973 Ed., § 24-485; Apr. 23, 1977, D.C. Law 1-130, § 6, 23 DCR 9694.)

Legislative history of Law 1-130. — See note to § 24-481.

§ 24-486. Institutional review committees.

There shall be established, within each facility and institution of the Department, an institutional review committee composed of a psychologist, a senior correctional officer, and an academician. Each committee shall be appointed by the Director, or his designee. It shall be the function of each committee to examine the progress and adjustments of the residents of the facility or institution in which the committee was established, and to make recommendations to the appropriate person with respect to the applications for furloughs of such residents. In making such recommendations, each committee shall rely generally upon consideration of the applicant's disciplinary record, psychological evaluation, work and training participation, and attitudinal and behavior adjustment. (1973 Ed., § 24-486; Apr. 23, 1977, D.C. Law 1-130, § 7, 23 DCR 9694.)

Section references. — This section is referred to in § 24-481.

Legislative history of Law 1-130. — See note to § 24-481.

§ 24-487. Report to Council.

The Director shall submit to the Council's Committee on Public Safety, semiannually (on January 31st and July 31st of each year), a report on the furlough program conducted during the immediately preceding period. The report shall include the number of furloughs granted during such reporting period, the types of furloughs so granted, a listing of all instances where a furloughed resident failed to abide by the conditions of his furlough, an analysis of each of the furloughed residents, giving the sex, sentence data, and other relevant information relating to each such resident, and such other information as the Director may deem necessary and relevant. The Director shall formulate an overall evaluation and submit same as a part of the report required by this section. (1973 Ed., § 24-487; Apr. 23, 1977, D.C. Law 1-130, § 8, 23 DCR 9694.)

Legislative history of Law 1-130. — See note to § 24-481.

§ 24-488. Severability.

If any section or provision of this subchapter is held to be unconstitutional or otherwise invalid in its application to any person or circumstance, such unconstitutionality or invalidity shall not affect the applicability of that section or provision, or the applicability of the remaining sections or provisions of this subchapter, to other persons or circumstances. (1973 Ed., § 24-488; Apr. 23, 1977, D.C. Law 1-130, § 9, 23 DCR 9694.)

Legislative history of Law 1-130. — See note to § 24-481.

Subchapter VI. HIV Testing of Certain Criminal Offenders.

§ 24-491. Definitions.

For the purposes of this subchapter, the term:

(1) "Convicted" means having received a verdict, or a finding, of guilt in a criminal proceeding, adjudicated as being delinquent in a juvenile proceeding, or having entered a plea of guilty or nolo contendere.

(2) "HIV test" means blood testing for the human immunodeficiency virus ("HIV") or any other identified causative agent of the acquired immune deficiency syndrome ("AIDS").

(3) "Mayor" means the Mayor of the District of Columbia, or his or her designee.

(4) "Offense" means any prohibited activity involving a sexual act that includes contact between the penis and the vulva or the penis and the anus, however slight, or contact between the mouth and the penis, the mouth and the vulva, or the mouth and the anus.

(5) "Victim" means a person injured by the commission of an offense, and includes the parent or legal guardian of a victim, if the victim is a minor, or the

spouse or child of a victim, if the victim is deceased or incapacitated. (Nov. 11, 1995, D.C. Law 11-74, § 2, 42 DCR 3624.)

Section references. — This section is referred to in § 24-492.

Emergency act amendments. — For temporary addition of subchapter, see §§ 2 to 4 of the HIV Testing of Certain Criminal Offenders Emergency Act of 1995 (D.C. Act 11-87, July 6, 1995, 42 DCR 3617).

Legislative history of Law 11-74. — Law 11-74, the “HIV Testing of Certain Criminal Offenders Act of 1995,” was introduced in Coun-

cil and assigned Bill No. 11-166, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on June 6, 1995, and June 20, 1995, respectively. Signed by the Mayor on July 6, 1995, it was assigned Act No. 11-89 and transmitted to both Houses of Congress for its review. D.C. Law 11-74 became effective on November 11, 1995.

§ 24-492. Testing and counselling.

(a) Upon the request of a victim, the court shall order any individual convicted of an offense, as defined by § 24-491, to furnish a blood sample to be tested for the presence of HIV.

(b) The court shall promptly notify the Mayor of any court order for an HIV test. Upon receipt of a court order for an HIV test, the Mayor shall promptly collect a blood sample from the convicted individual and conduct an HIV test on the blood sample.

(c) After conducting the HIV test, the Mayor shall promptly notify the victim and the convicted individual of the results of the HIV test. The Mayor shall not disclose the results of the HIV test without also providing, offering, or arranging for appropriate counselling and referral for appropriate health care and support services to the victim and the convicted individual.

(d) The victim may disclose the results of the HIV test to any other individual to protect the health and safety of the victim, the victim’s sexual partners, or the victim’s family.

(e) The result of any HIV test conducted under this section shall not be admissible as evidence of guilt or innocence in any criminal proceeding. (Nov. 11, 1995, D.C. Law 11-74, § 3, 42 DCR 3624.)

Emergency act amendments. — For temporary addition of subchapter, see §§ 2 to 4 of the HIV Testing of Certain Criminal Offenders Emergency Act of 1995 (D.C. Act 11-87, July 6, 1995, 42 DCR 3617).

Legislative history of Law 11-74. — See note to § 24-491.

§ 24-493. Rules.

(a) The Mayor shall, pursuant to Subchapter I of Chapter 15 of Title 1, issue rules to implement this subchapter.

(b) The rules shall include provisions regarding notification to the victim of his or her right to request an HIV test, confidentiality of the test results, free counselling for the victim and the convicted individual concerning HIV testing and HIV disease, and referral for appropriate health care and supportive services. (Nov. 11, 1995, D.C. Law 11-74, § 4, 42 DCR 3624.)

Emergency act amendments. — For temporary addition of subchapter, see §§ 2 to 4 of the HIV Testing of Certain Criminal Offenders Emergency Act of 1995 (D.C. Act 11-87, July 6, 1995, 42 DCR 3617).

Legislative history of Law 11-74. — See note to § 24-491.

CHAPTER 5. REHABILITATION OF ALCOHOLICS.

Sec.	Sec.
24-501 to 24-513. [Omitted].	24-527. Commitment by Court order.
24-514. [Repealed].	24-528. Limitation of application of chapter.
24-521. Purpose.	24-529. Authority of Mayor to contract.
24-522. Definitions.	24-530. Programs for alcoholic employees.
24-523. Public health program; delegation of powers by Mayor.	24-531. Program for inmates in correctional institutions.
24-524. Public intoxication; confidential records.	24-532. Program for juveniles and young adults.
24-525. Voluntary admission to inpatient centers; information program; involuntary detention.	24-533. Evaluations and recommendations by Mayor; publications; comprehensive plan.
24-526. Outpatient treatment; treatment where recovery unlikely; coordination of treatment programs.	24-534. Cost of treatment.
	24-535. Donations.

§§ 24-501 to 24-513. Purpose; “chronic alcoholic” defined; alcoholic clinic; suspension of criminal proceedings; hearing; commitment to clinic; classification and diagnostic center; director’s recommendation to committing judge; court order; designation of director as representative of Attorney General; discharge at expiration of term; second hearing on director’s recommendation; recommitment; supervision by probation officer or other agency; certification of adequate facilities; voluntary submission for treatment; admission; payment of costs; rules and regulations; rights as citizens retained; contract for treatment by appropriate agency; director of clinic; personnel; director’s recommendations; publication of data.

Omitted.

§ 24-514. Advisory committee.

Repealed. Aug. 3, 1968, 82 Stat. 624, Pub. L. 90-452, § 3(c).

§ 24-521. Purpose.

The purpose of this chapter is to establish a comprehensive program in the District of Columbia for the prevention of alcoholism and the rehabilitation of alcoholics, discourage abuse of alcoholic beverages, and provide for medical, psychiatric, and other scientific treatment of chronic alcoholics; to minimize the deleterious effects of excessive drinking; to reduce the financial burden imposed upon the people of the District of Columbia by the abusive use of

alcoholic beverages, as is reflected in accidents, inefficiency of personnel, and absenteeism; and to establish methods of handling intoxication and alcoholism that will benefit the individual involved and more fully protect the public. In order to accomplish this purpose and alleviate intoxication and chronic alcoholism, all public officials in the District of Columbia shall take cognizance of the fact that public intoxication shall be handled as a public health problem rather than as a criminal offense, and that a chronic alcoholic is a sick person who needs, is entitled to, and shall be provided appropriate medical, psychiatric, institutional, advisory, and rehabilitative treatment services of the highest caliber for his illness. (Aug. 4, 1947, 61 Stat. 744, ch. 472, § 1; Aug. 3, 1968, 82 Stat. 618, Pub. L. 90-452, § 3(a); 1973 Ed., § 24-521.)

Request for civil commitment. — A chronic alcoholic, when charged with any misdemeanor other than a charge of public intoxication under § 25-128, may voluntarily request civil commitment in lieu of criminal prosecution for such misdemeanor, and the court may on its own initiative civilly commit a chronic

alcoholic who has been charged with a violation of § 25-128. *United States of Am. v. Lewis*, 123 WLR 245 (Super. Ct. 1994).

Cited in *Williams v. United States*, App. D.C., 421 A.2d 19 (1980); *United States v. Cureton*, 110 WLR 245 (Super. Ct. 1982).

§ 24-522. Definitions.

For purposes of this chapter:

(1) The term “chronic alcoholic” means any person who chronically and habitually uses alcoholic beverages to the extent that:

(A) They injure his health or interfere with his social or economic functioning; or

(B) He has lost the power of self-control with respect to the use of such beverages.

(2) The term “Court” means the Superior Court of the District of Columbia.

(3) The term “Mayor” means the Mayor of the District of Columbia. (Aug. 4, 1947, 61 Stat. 744, ch. 472, § 2; Aug. 3, 1968, 82 Stat. 618, Pub. L. 90-452, § 3(a); July 29, 1970, 84 Stat. 570, Pub. L. 91-358, title I, § 155(a); 1973 Ed., § 24-522.)

Section references. — This section is referred to in §§ 2-2011 and 2-2729.

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat.

818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

Cited in *Easter v. District of Columbia*, 361 F.2d 50 (D.C. Cir. 1966); *United States v. Cureton*, 110 WLR 245 (Super. Ct. 1982); *United States of Am. v. Lewis*, 123 WLR 245 (Super. Ct. 1994).

§ 24-523. Public health program; delegation of powers by Mayor.

(a) The Mayor shall establish and maintain an effective public health program in the District of Columbia to provide a continuum of appropriate services to intoxicated persons and chronic alcoholics. Such program shall coordinate all District of Columbia services for intoxicated persons and chronic alcoholics and shall include at least the following facilities which shall be available to both males and females:

(1) One or more detoxification centers, which shall be located within the District of Columbia, which shall have a total capacity of not more than 150 beds, and which shall provide appropriate medical services for intoxicated persons, including initial examination, diagnosis, and classification;

(2) An inpatient extended care facility which shall have a capacity of not more than 800 beds and which shall provide intensive study, treatment, and rehabilitation of chronic alcoholics. Such facility shall not admit intoxicated persons; and

(3) Outpatient aftercare facilities which may include clinics, social centers, vocational rehabilitation services, and supportive residential facilities and which shall have a total capacity of not more than 600 beds.

(b) The Mayor may:

(1) Establish or designate an agency of the District of Columbia government; and

(2) Designate any officer or employee of the District of Columbia government to carry out any of his functions, powers, and duties under this chapter. (Aug. 4, 1947, 61 Stat. 744, ch. 472, § 3; Aug. 3, 1968, 82 Stat. 619, Pub. L. 90-452, § 3(a); 1973 Ed., § 24-523.)

Section references. — This section is referred to in §§ 24-524, 24-525, and 24-526.

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

Delegation of functions. — Under Organization Order No. 141, dated February 11, 1964, as amended, the Director of Public Health was vested with functions relating to development of a program for the prevention etc., of alcoholism, and the Department of Public Health was designated the agency of the District of Columbia to prepare and execute a comprehensive program to provide a continuum of appropriate services to intoxicated persons and chronic alcoholics. Functions set forth in Organization Order No. 141 were transferred to the Director of the Department of Human Resources by Commissioner's Order No. 69-96, dated March 7, 1969, as amended by Commissioner's Order No. 70-83, dated March 6, 1970.

Failure to make available rehabilitation facilities. — That the facilities contemplated by Act of Congress for the rehabilitation of alcoholics had not been made available did not detract from the legal effect of the provisions of the 1947 Act defining the nature of the sickness. *Easter v. District of Columbia*, 361 F.2d 50 (D.C. Cir. 1966).

§ 24-524. Public intoxication; confidential records.

(a) Except as otherwise provided in subsection (b) of this section, any person who is intoxicated in public: (1) may be taken or sent to his home or to a public or private health facility; or (2) if not taken or sent to his home or such facility under clause (1) of this subsection, shall be taken to a detoxification center, by the Mayor. Reasonable measures may be taken to ascertain that public transportation used for such purposes shall be paid for by such person in advance. Any intoxicated person may voluntarily come to a detoxification center for medical attention. The medical officer in charge of a detoxification center shall have the authority to determine whether a person shall be admitted to such center as a patient, or whether he should be referred to another health facility. The medical officer in charge of such center shall have the authority to require any person admitted as a patient under this subsection to remain at such center until he is sober and no longer incapacitated, but in any event no longer than 72 hours after his admission as a patient. If the medical officer concludes that such person should receive treatment at a different facility, he shall arrange for such treatment and for transportation to that facility. A detoxification center may provide medical services to a person who is not admitted as a patient. A patient in a detoxification center shall be encouraged to consent to an intensive diagnosis for alcoholism and to treatment at the inpatient and outpatient facilities authorized in § 24-523 (a).

(b)(1) Any person who is taken into custody for violating § 25-128 shall be brought to a detoxification center where he shall either be admitted as a patient or transported by the Mayor to another appropriate medical facility for treatment. The police officer who took such person into custody for violating such section shall leave a violation notice for such person with the medical officer in charge of the detoxification center. After such person is sober and no longer incapacitated, the medical officer in charge of the detoxification center shall detain him as long as is reasonably necessary to conduct a diagnosis for alcoholism. If such person is diagnosed as a chronic alcoholic the medical officer shall, after a review of such person's record, recommend to the Corporation Counsel whether a criminal charge should be filed against such person for violating such section in order to institute civil commitment proceedings under § 24-527. If such a criminal charge is not filed, no entry relating to such person's arrest for violating such section shall be made on any arrest or other criminal record. If the Corporation Counsel concludes that a criminal charge should be filed, the medical officer in charge of the detoxification center shall deliver to such person the violation notice that had been left with him. If such person is not diagnosed as a chronic alcoholic the medical officer in charge of the detoxification center shall deliver to him the violation notice that had been left with the medical officer and such person shall, after he is released by the center, be handled as in any other criminal case.

(2) Any person who is taken into custody in the District of Columbia for violating any criminal provision applicable in the District of Columbia (other than such § 25-128) and who appears to be intoxicated may be taken by the police to a detoxification center where he may be admitted as a patient for an

immediate medical evaluation of his condition. As soon as it is determined that he is not in medical danger he shall be handled by the police as in any other criminal case. If his health is in danger, he may be detained either at the detoxification center or at some other appropriate medical facility until the danger has passed, and he shall then be handled as in any other criminal case. Such security conditions shall be maintained as are commensurate with the seriousness of the offense. In appropriate cases where there is no danger to the safety of any person, the police may leave with the medical officer in charge of the detoxification center a violation notice which shall be delivered to such person when he is released from the detoxification center.

(c) The registration and other records of a detoxification center shall remain confidential, and may be disclosed only to medical personnel for purposes of diagnosis, treatment, and court testimony, to police personnel for purposes of investigation of criminal offenses and complaints against police action, and to authorized personnel for purposes of presentence reports.

(d) The Mayor shall promptly develop, in cooperation with the police, procedures for taking or sending an intoxicated person to a detoxification center, his residence, or a public or private health facility if no criminal charge is brought against such person. (Aug. 4, 1947, 61 Stat. 745, ch. 472, § 4; Aug. 3, 1968, 82 Stat. 619, Pub. L. 90-452, § 3(a); 1973 Ed., § 24-524.)

Section references. — This section is referred to in §§ 4-142 and 25-128.

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia.

These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

Request for civil commitment. — A chronic alcoholic, when charged with any misdemeanor other than a charge of public intoxication under § 25-128, may voluntarily request civil commitment in lieu of criminal prosecution for such misdemeanor, and the court may on its own initiative civilly commit a chronic alcoholic who has been charged with a violation of § 25-128. *United States of Am. v. Lewis*, 123 WLR 245 (Super. Ct. 1994).

§ 24-525. Voluntary admission to inpatient centers; information program; involuntary detention.

(a) Any person may voluntarily request admission to the inpatient center authorized in § 24-523 (a), and no person committed under § 24-527 shall take precedence for purposes of admission over a person who voluntarily requests admission unless the person so committed is found by the Court to endanger the public safety. The medical officer in charge of the inpatient center is authorized to determine who shall be admitted as a patient. A complete medical, social, occupational, and family history shall be obtained as part of the diagnosis and classification at the inpatient center, and an effort shall also be made to obtain copies of all pertinent records from other agencies,

institutions, and medical facilities in order to develop a complete and permanent history on each patient.

(b) A program shall be developed for patients of the inpatient center who are diagnosed not to be chronic alcoholics which program shall be designed to inform them of the dangers of alcoholism.

(c) In the case of a patient of the inpatient center who is diagnosed as a chronic alcoholic, he shall be given immediate, intensive treatment for chronic alcoholism at the inpatient center.

(d) No patient may be detained at the inpatient center without his consent, except under an order of the Court issued under § 24-527. Reasonable regulations for checking out of the inpatient center and for providing transportation may be adopted. If a patient checks out of the center against medical advice, he may be readmitted at the discretion of the medical officer in charge of the center. (Aug. 4, 1947, 61 Stat. 745, ch. 472, § 5; Aug. 3, 1968, 82 Stat. 620, Pub. L. 90-452, § 3(a); 1973 Ed., § 24-525.)

§ 24-526. Outpatient treatment; treatment where recovery unlikely; coordination of treatment programs.

(a) A chronic alcoholic shall be encouraged to consent to outpatient and aftercare treatment for his illness at the types of facilities authorized in § 24-523(a). Any person may voluntarily request admission to outpatient treatment. The medical officer in charge of the outpatient treatment is authorized to determine who shall be admitted to such treatment. There shall be 1 central outpatient treatment office which shall coordinate the operation of all outpatient facilities, and particularly shall be responsible for locating residential facilities for indigent intoxicated persons and alcoholics.

(b) For chronic alcoholics for whom recovery is unlikely, supporting services and residential facilities shall be provided.

(c) The Mayor shall be responsible, through the outpatient treatment programs, for coordinating all public and private community efforts, including welfare services, vocational rehabilitation, and job placement, to integrate chronic alcoholics back into society as productive citizens.

(d) No person shall be required to participate in outpatient treatment without his consent unless required under an order of the Court issued under § 24-527. Reasonable requirements may be placed upon such a person as conditions for his participation in such treatment. If a patient withdraws from outpatient treatment against medical advice, he may be readmitted at the discretion of the medical officer in charge of outpatient treatment. (Aug. 4, 1947, 61 Stat. 745, ch. 472, § 6; Aug. 3, 1968, 82 Stat. 621, Pub. L. 90-452, § 3(a); 1973 Ed., § 24-526.)

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmen-

tal Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and

Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

Request for civil commitment. — A chronic alcoholic, when charged with any misdemeanor other than a charge of public intoxication under § 25-128, may voluntarily request civil commitment in lieu of criminal prosecution for such misdemeanor, and the court may on its own initiative civilly commit a chronic alcoholic who has been charged with a violation of § 25-128. *United States of Am. v. Lewis*, 123 WLR 245 (Super. Ct. 1994).

§ 24-527. Commitment by Court order.

(a) The Court may, on a petition of the Corporation Counsel on behalf of the Mayor, filed and heard before the period of detention for detoxification and diagnosis expires, order a person to be committed to the custody of the Mayor for inpatient treatment and care if: (1) the Court determines that the person is a chronic alcoholic and that as a result of chronic or acute intoxication such person is in immediate danger of substantial physical harm; and (2) such person received notice of the filing of such petition within a reasonable time before the hearing held by the Court. The period of such commitment, computed from the date of admission to a detoxification center, shall not exceed: (1) thirty days in the case of the first or second such commitment within any 24-month period; or (2) ninety days in the case of the third or subsequent such commitment within any 24-month period.

(b)(1)(A) The Court may, after making the findings prescribed in paragraph (2) of this subsection, commit to the custody of the Mayor for treatment and care for up to a specified period of time a chronic alcoholic who:

(i) Is charged with any misdemeanor and who, prior to trial for such misdemeanor, voluntarily requests such treatment in lieu of criminal prosecution for such misdemeanor;

(ii) Is charged with a violation of § 25-128 and is acquitted on the ground of chronic alcoholism; or

(iii) Is convicted of a violation of such § 25-128.

(B) The term of commitment of a chronic alcoholic ordered by the Court under this subsection may not exceed the maximum term of imprisonment authorized for the misdemeanor for which the chronic alcoholic was charged.

(2)(A) Before any person may be committed under this subsection, the Court shall, after a medical diagnosis and a civil hearing, find that:

(i) The person is a chronic alcoholic;

(ii) Adequate and appropriate treatment provided by the Mayor is available for the person; and

(iii) In the case of a person described in sub-subparagraph (iii) of subparagraph (A) of paragraph (1) of this subsection, he constitutes a continuing danger to the safety of himself or of other persons.

(B) The Court shall give reasonable notice of such hearing to the person sought to be committed and his attorney. In the case of a person described in sub-subparagraph (iii) of subparagraph (A) of paragraph (1) of this subsection, if the Court does not make the finding described in sub-subparagraph (ii) of

subparagraph (A) of this paragraph, the Court may sentence the person to a penal institution pending the availability of such treatment, but for a period not to exceed the maximum term of imprisonment authorized for a violation of such § 25-128.

(c) A committed person may challenge by a petition for a writ of habeas corpus the applicability of such findings, except that no more than 1 such petition may be filed in any 6-month period. The limitation prescribed in the preceding sentence shall not apply in the case of petitions based on newly discovered evidence.

(d) The Mayor may transfer a committed person who has been adjudged a continuing danger to the safety of himself or of other persons from inpatient to outpatient status only with permission of the Court. The Mayor may transfer any other committed person from inpatient to outpatient status, and any committed person from outpatient to inpatient status, without permission of the Court, but may not release a committed person without permission of the Court.

(e) If any person subject to a commitment proceeding initiated under this section does not have an attorney and cannot afford one, the Court shall appoint one to represent him. (Aug. 4, 1947, 61 Stat. 745, ch. 472, § 7; Aug. 3, 1968, 82 Stat. 621, Pub. L. 90-452, § 3(a); 1973 Ed., § 24-527.)

Cross references. — As to representation of indigents by Public Defender Service, see § 1-2702.

Section references. — This section is referred to in §§ 1-2702, 24-524, 24-525, 24-526, and 24-534.

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

Commitment a matter of court discretion. — This section clearly indicates that commitment of a chronic alcoholic defendant is generally a matter of discretion of the court. *Peoples v. District of Columbia*, App. D.C., 75 A.2d 845 (1950).

The decision whether or not to commit a defendant in lieu of prosecution is confined to the sound discretion of the trial judge. *United States v. Cureton*, 110 WLR 245 (Super. Ct. 1982).

Request for civil commitment. — A chronic alcoholic, when charged with any misdemeanor other than a charge of public intoxication under § 25-128, may voluntarily request civil commitment in lieu of criminal prosecution for such misdemeanor, and the court may on its own initiative civilly commit a chronic alcoholic who has been charged with a violation of § 25-128. *United States of Am. v. Lewis*, 123 WLR 245 (Super. Ct. 1994).

Considerations germane to court's exercise of discretion on motion to commit. — See *United States v. Cureton*, 110 WLR 245 (Super. Ct. 1982).

Chronic alcoholic may not be punished. — A defendant who is determined to be a chronic alcoholic may in judge's discretion be committed for treatment or he may be released, but he may not be punished. *Easter v. District of Columbia*, 361 F.2d 50 (D.C. Cir. 1966).

Correction of inadequate rehabilitation program. — Redress and correction of the problem of inadequate treatment facilities and personnel to carry out an alcoholic rehabilitation program, if needed, lie with Congress. *Easter v. District of Columbia*, App. D.C., 209 A.2d 625 (1965), rev'd on other grounds, 361 F.2d 50 (D.C. Cir. 1966).

§ 24-528. Limitation of application of chapter.

The provisions of this chapter shall apply to chronic alcoholics who have not been determined to be mentally ill. The handling of a chronic alcoholic who has been determined to be mentally ill shall be governed by the provisions of Chapter 5 of Title 21. (Aug. 4, 1947, 61 Stat. 745, ch. 472, § 8; Aug. 3, 1968, 82 Stat. 622, Pub. L. 90-452, § 3(a); 1973 Ed., § 24-528.)

§ 24-529. Authority of Mayor to contract.

The Mayor may contract with any appropriate public or private agency, organization, or institution that has proper and adequate treatment facilities, programs, and personnel, in order to carry out the purposes of this chapter. (Aug. 4, 1947, 61 Stat. 745, ch. 472, § 9; Aug. 3, 1968, 82 Stat. 622, Pub. L. 90-452, § 3(a); 1973 Ed., § 24-529.)

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and

Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

§ 24-530. Programs for alcoholic employees.

(a) The Mayor shall be responsible for developing and maintaining, in cooperation with other District of Columbia agencies and departments, programs for the prevention and treatment of alcoholism and the rehabilitation of alcoholics among District of Columbia employees consistent with the intent of this chapter.

(b) The Mayor shall also be responsible for fostering alcoholism rehabilitation programs in private industry in the District of Columbia. (Aug. 4, 1947, 61 Stat. 746, ch. 472, § 10; Aug. 3, 1968, 82 Stat. 622, Pub. L. 90-452, § 3(a); 1973 Ed., § 24-530.)

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and

Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

§ 24-531. Program for inmates in correctional institutions.

The Mayor shall be responsible for establishing and maintaining a program for the prevention and treatment of alcoholism and the rehabilitation of alcoholics in correctional institutions in the District of Columbia. (Aug. 4, 1947, 61 Stat. 746, ch. 472, § 11; Aug. 3, 1968, 82 Stat. 622, Pub. L. 90-452, § 3(a); 1973 Ed., § 24-531.)

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and

Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

§ 24-532. Program for juveniles and young adults.

The Mayor shall be responsible for establishing and maintaining, in cooperation with the schools, the police, the courts, and other public agencies in the District of Columbia, an effective program for the prevention of intemperance and alcoholism, and the treatment and rehabilitation of incipient alcoholics, among juveniles and young adults. (Aug. 4, 1947, 61 Stat. 746, ch. 472, § 12; Aug. 3, 1968, 82 Stat. 622, Pub. L. 90-452, § 3(a); 1973 Ed., § 24-532.)

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and

Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

§ 24-533. Evaluations and recommendations by Mayor; publications; comprehensive plan.

(a) The Mayor shall maintain a continuing evaluation of his programs and shall conduct pilot and demonstration projects to improve his programs, shall from time to time submit to the Congress such recommendations for programs for the District of Columbia to further the rehabilitation of chronic alcoholics, prevent the excessive and abusive use of alcoholic beverages, and promote moderation in the use of such beverages.

(b) The Mayor shall prepare and publish materials, data, information, and statistics that relate to the problems of intoxication and alcoholism in the District of Columbia and that may be used in a program of public education directed toward the prevention of the excessive and abusive use of alcoholic beverages.

(c) The Mayor shall develop a comprehensive plan to implement the objectives and policies of this chapter, and in so doing shall consult and collaborate with appropriate public and private agencies, institutions, and organizations in the District of Columbia, and with the Secretary of Health and Human Services. In developing such plan, the Mayor shall make every effort to utilize funds, programs, and facilities authorized under federal legislation. (Aug. 4, 1947, 61 Stat. 746, ch. 472, § 13; Aug. 3, 1968, 82 Stat. 623, Pub. L. 90-452, § 3(a); 1973 Ed., § 24-533.)

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of

Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

Transfer of functions. — The functions of the Department of Health, Education and Welfare was transferred to the Department of Health and Human Services by the Act of October 17, 1979, 93 Stat. 675, Pub. L. 96-88, § 509.

§ 24-534. Cost of treatment.

(a)(1) Except as otherwise provided in paragraph (2) of this subsection, if a person receives care, treatment, or any other services under this chapter: (A) such person (or his estate); and (B) such person's father, mother, spouse, or adult children, shall be liable (each according to his ability, as determined by the Mayor, and in the order listed above) to reimburse the District of Columbia, for all or such part of the actual cost of providing such services, as the Mayor may require. The liability of any person described in clause (B) of this paragraph shall be determined by the Mayor after notice to such person that services have been or will be rendered under this chapter and the Mayor has found that such person is able to reimburse the District of Columbia for all or a part of the cost of providing such services. Such person may not be held liable for the cost of any services rendered more than 90 days prior to the date of issue of such notice. The Mayor shall determine the ability of the person who received services under this chapter (or his estate) or his father, mother, spouse, or adult children, as the case may be, to reimburse the District of Columbia, by an examination conducted under oath. In any one case the Mayor may conduct as many examinations as he determines are necessary to ascertain the ability of such person (or his estate) or his relatives to so reimburse the District of Columbia. In the case of a person committed under § 24-527(a), the Mayor may conduct such examination at any time after a

petition for such person's commitment is filed under such section; and in the case of a person committed under § 24-527(b), such examination may be conducted by the Mayor at any time after the court serves notice of the hearing to be conducted under subsection (b) of such section. In all other cases the Mayor may conduct an examination at any time.

(2) Any person described in clause (B) of paragraph (1) of this subsection who is liable to the District of Columbia under this section may apply to the Mayor to have such liability waived. The Mayor may waive such liability if he determines that it would be unreasonable to impose such liability because of the desertion or neglect of such person by the recipient of services under this chapter or because of other factors similarly affecting the relationship between such person and such recipient. The Mayor shall prescribe procedures for the filing and hearing of such application under this paragraph.

(b) The Mayor may bring an action against a person made liable under subsection (a) of this section for all or any part of the cost of services provided under this chapter to require such person to satisfy such liability. In such an action the court may issue an order requiring any such person who is a party to such action to satisfy such liability in accordance with such terms as the court may prescribe. Such order may be enforced in the same manner as orders for alimony.

(c) Sums collected by the Mayor under this section shall be deposited in the Treasury of the United States to the credit of the District of Columbia. (Aug. 4, 1947, ch. 472, § 14; Aug. 3, 1968, 82 Stat. 623, Pub. L. 90-452, § 3(a); 1973 Ed., § 24-534.)

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat.

818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

Reimbursement for treatment services provided by District. — See Commissioner's Order No. 74, dated January 31, 1974.

§ 24-535. Donations.

The Mayor may accept on behalf of the District of Columbia donations of services or gifts of real or personal property, tangible or intangible, which are made for the purpose of carrying out his functions under this chapter. Gifts of money and the proceeds from the liquidation of any other gift shall be deposited in the General Fund of the District of Columbia as established in the Revenue Funds Availability Act of 1975. The Mayor shall use such donations and gifts to carry out the purposes of this chapter. (Aug. 4, 1947, ch. 472, § 15; Aug. 3, 1968, 82 Stat. 624, Pub. L. 90-452, § 3(a); 1973 Ed., § 24-535; Jan. 22, 1976, D.C. Law 1-42, § 5(b), 22 DCR 6316.)

Cross references. — As to establishment of General Fund, see § 47-131.

Legislative history of Law 1-42. — Law 1-42, the "Revenue Funds Availability Act of 1975," was introduced in Council and assigned Bill No. 1-161, which was referred to the Committee on the Budget. The Bill was adopted on first and second readings on July 29, 1975, and October 7, 1975, respectively. Signed by the Mayor on October 24, 1975, it was assigned Act No. 1-59 and transmitted to both Houses of Congress for its review.

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmen-

tal Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

CHAPTER 6. REHABILITATION OF USERS OF NARCOTICS.

Sec.	Sec.
24-601. Purpose.	24-611. Patient not deemed a criminal.
24-602. Definitions.	24-612. [Omitted].
24-603. Order of examination.	24-613. Care and treatment of drug users; authority of Surgeon General.
24-604. Right to counsel.	24-614. Admittance into Public Health Service hospitals; narcotics users from District.
24-605. Examinations by physicians.	24-615. Release of patients.
24-606. When hearing is required.	
24-607. Hearing.	
24-608. Confinement of patient.	
24-609. Release of patient.	
24-610. Periodic examination of released patients.	

§ 24-601. Purpose.

The purpose of §§ 24-601 to 24-611 is to protect the health and safety of the people of the District of Columbia from the menace of drug addiction and to afford an opportunity to the drug user for rehabilitation. The Congress intends that federal criminal laws shall be enforced against drug users as well as other persons, and §§ 24-601 to 24-611 shall not be used to substitute treatment for punishment in cases of crime committed by drug users. (June 24, 1953, 67 Stat. 77, ch. 149, § 2; July 24, 1956, 70 Stat. 609, ch. 676, title I, § 101; 1973 Ed., § 24-601.)

Section references. — This section is referred to in §§ 1-2702, 11-921, 24-602, 24-604, 24-607, 24-609 to 24-611, and 24-614.

This chapter is not a criminal statute. In re Whisaker, 134 F. Supp. 864 (D.D.C. 1955).

Government may prosecute criminal offense under federal statute. — The provision of this section that this chapter shall not be used to substitute treatment for punishment in cases of crime committed by drug users means that, when the government is able successfully

to prosecute any drug user for a criminal offense under any federal statute, it may do so. *United States v. Moore*, 486 F.2d 1139 (D.C. Cir.), cert. denied, 414 U.S. 980, 94 S. Ct. 298, 38 L. Ed. 2d 224 (1973).

Congress intended to include juveniles within operation of this chapter. In re Whisaker, 134 F. Supp. 864 (D.D.C. 1955).

Cited in *Williams v. United States*, App. D.C., 421 A.2d 19 (1980); *Grant v. United States*, App. D.C., 509 A.2d 1147 (1986).

§ 24-602. Definitions.

For the purpose of §§ 24-601 to 24-611:

(1) The term “drug user” means any person, including a person under 18 years of age, notwithstanding the provisions of Chapter 23 of Title 16, who uses any habit-forming narcotic drugs so as to endanger the public morals, health, safety, or welfare, or who is so far addicted to the use of such habit-forming narcotic drugs as to have lost the power of self-control with reference to his addiction.

(2) The term “narcotic drugs” shall have the same meaning as that given to such term by § 4731 of the Internal Revenue Code of 1954.

(3) The term “patient” means any person ordered to appear before the Mayor, pursuant to the provisions of § 24-603.

(4) The term “Mayor” means the Mayor of the District of Columbia, sitting as a Board, or his designated agent or agents. (June 24, 1953, 67 Stat. 77,

ch. 149, § 3; July 24, 1956, 70 Stat. 609, ch. 676, title I, § 101; July 29, 1970, 84 Stat. 590, Pub. L. 91-358, title I, § 170; 1973 Ed., § 24-602.)

Section references. — This section is referred to in §§ 1-2702, 2-2729, 11-921, 24-601, 24-604, 24-607, 24-609 to 24-611, and 24-614.

References in text. — Section 4731 of the Internal Revenue Code of 1954, referred to in subdivision (2) of this section, was repealed by 84 Stat. 1292, Pub. L. 91-513, § 1101(b)(3)(A).

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

Congress intended to include juveniles within operation of this chapter. In *re Whisaker*, 134 F. Supp. 864 (D.D.C. 1955).

Defendant an addict although drug use did not impair free will. — A defendant who had used heroin for about 15 years, who ordinarily took 3 or 4 shots a day and whose usual dose was 3 or 4 capsules, who did not steal to obtain money to buy narcotics, and who did not suffer any serious withdrawal symptoms when committed to hospital after his arrest, was an "addict" within meaning of this chapter even though he had not gone so far in his drug habits as to lack free will. *Wheeler v. United States*, App. D.C., 276 A.2d 722 (1971).

Addiction as defense in criminal prosecution. — A decision permitting a defendant charged with possession of narcotics and narcotics paraphernalia to raise the affirmative defense that he lacked capacity to refrain from using narcotics by reason of drug addiction cannot be rested on trial court record which does not disclose basis for expert witness' conclusion that defendant had an overwhelming psychological compulsion to use heroin and there was no showing of whether finding of addiction related to criminal responsibility or only to habitual use. *Franklin v. United States*, App. D.C., 339 A.2d 398 (1975).

§ 24-603. Order of examination.

(a) Whenever the Mayor has probable cause to believe that any person within the District of Columbia, other than a person referred to in subsection (b) of this section, is a drug user, he forthwith shall order any law enforcement officer of the District of Columbia to bring that person before him, to conduct a preliminary examination, and if he finds sufficient evidence of addiction, as hereinbefore defined, he shall cause that person to be placed in an institution to be designated by him for an examination by physicians pursuant to § 24-605.

(b) The Mayor shall not order any person brought before him if the said person is charged with a criminal offense, whether by indictment, information, or otherwise, or if the said person is under sentence for a criminal offense, whether he is serving the sentence, or is on probation or parole, or has been released on bond pending appeal. (June 24, 1953, 67 Stat. 77, ch. 149, § 4; July 24, 1956, 70 Stat. 609, ch. 676, title I, § 101; 1973 Ed., § 24-603.)

Section references. — This section is referred to in §§ 1-2702, 11-921, 24-601, 24-602, 24-604, 24-605, 24-607, 24-609 to 24-611, and 24-614.

Change in government. — This section originated at a time when local government

powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorga-

nization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced

by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

Cited in *Grant v. United States*, App. D.C., 509 A.2d 1147 (1986).

§ 24-604. Right to counsel.

(a) A patient shall have the right to the assistance of counsel at every stage of the judicial proceeding under §§ 24-601 to 24-611, and the court shall assign counsel to represent him if the patient is unable to obtain counsel.

(b) The counsel for a patient may inspect the reports of the examination made pursuant to the authority contained in § 24-605. No such report and no evidence resulting from such personal examination or evidence offered by the patient shall be admissible against him in any judicial proceeding except a proceeding under §§ 24-601 to 24-611.

(c) The patient may, prior to the examination made pursuant to the provisions of § 24-605 or prior to the hearing provided for by § 24-607, waive his rights to an examination, to counsel, or to such hearing, and voluntarily submit himself to commitment pursuant to the provisions of §§ 24-601 to 24-611. (June 24, 1953, 67 Stat. 78, ch. 149, § 7; July 24, 1956, 70 Stat. 610, ch. 676, title I, § 101; 1973 Ed., § 24-604.)

Section references. — This section is referred to in §§ 1-2702, 11-921, 24-601, 24-602, 24-607, 24-609 to 24-611, and 24-614.

§ 24-605. Examinations by physicians.

(a) Whenever the Mayor orders a patient into an institution pursuant to the provisions of § 24-603, he shall immediately appoint 2 qualified physicians, 1 of whom shall be a psychiatrist, to examine the said patient, and within 5 days after such appointment, each physician shall file with the United States Attorney for the District of Columbia, a written report of such examination, which shall include a statement of his conclusion as to whether the patient is a drug user.

(b) The United States Attorney for the District of Columbia shall review the facts and circumstances of each case submitted to him and present by petition those in which he feels justification exists in the public interest to the Superior Court of the District of Columbia for determination and disposition, or dismiss the patient from custody. A copy of such petition shall be served on the patient in open court, at which time the court shall set a hearing date and advise the patient of his right to counsel and his right to demand within 5 days a trial by jury. (June 24, 1953, 67 Stat. 78, ch. 149, § 5; July 24, 1956, 70 Stat. 610, ch. 676, title I, § 101; July 29, 1970, 84 Stat. 572, Pub. L. 91-358, title I, § 155(c)(31); 1973 Ed., § 24-605.)

Section references. — This section is referred to in §§ 1-2702, 11-921, 24-601 to 24-604, 24-606, 24-607, 24-609 to 24-611, and 24-614.

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners

under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

§ 24-606. When hearing is required.

If, in a report filed pursuant to § 24-605, either of the examining physicians states that the patient is a drug user, or that he is unable to reach any conclusion by reason of the refusal of the patient to submit to thorough examination, the Court shall conduct a hearing upon petition of the United States Attorney in the manner provided in § 24-607. (June 24, 1953, 67 Stat. 78, ch. 149, § 6; July 24, 1956, 70 Stat. 610, ch. 676, title I, § 101; 1973 Ed., § 24-606.)

Section references. — This section is referred to in §§ 1-2702, 11-921, 24-601, 24-602, 24-604, 24-607, 24-609 to 24-611, and 24-614.

§ 24-607. Hearing.

(a) Upon the evidence introduced at a hearing held for that purpose the court shall determine whether the patient is a drug user. The hearing shall be conducted without a jury unless, before such hearing and within 5 days after the date on which the petition is filed pursuant to § 24-605, a jury is demanded by the patient or by the United States Attorney for the District of Columbia. Each patient concerning whom a report is filed shall be detained at such place as the Mayor may designate until the completion of such hearing or until released as provided in § 24-605(b).

(b) The rules of evidence applicable in civil judicial proceedings shall be applicable to hearings pursuant to this section, including the right of the patient to present evidence in his own behalf and to subpoena and cross-examine witnesses. However, no patient examined pursuant to the provisions of §§ 24-601 to 24-611, shall be permitted at any hearing order pursuant to this section to object to the submission of testimony concerning such examination on the ground of privilege. (June 24, 1953, 67 Stat. 78, ch. 149, § 8; July 24, 1956, 70 Stat. 610, ch. 676, title I, § 101; 1973 Ed., § 24-607.)

Section references. — This section is referred to in §§ 1-2702, 11-921, 24-601, 24-602, 24-604, 24-606, 24-609 to 24-611, and 24-614.

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commis-

sioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of

the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia.

These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

§ 24-608. Confinement of patient.

If the court finds the patient to be a drug user, it may commit him to a hospital designated by the patient or the Mayor and approved by the court, to be confined there for rehabilitation until released in accordance with § 24-609. In the event a patient elects to designate a hospital to which he wishes to be committed, he shall be required to satisfy the court that such hospital has medical, rehabilitation, and security facilities comparable to the institutions designated by the Mayor and, in addition, the cost of such hospitalization shall be borne by the patient. The head of the hospital shall submit written reports within such periods as the court may direct, but no longer than 6 months after the commitment and for successive intervals of time thereafter, and state reasons why the patient has not been released. (June 24, 1953, 67 Stat. 79, ch. 149, § 9; July 24, 1956, 70 Stat. 611, ch. 676, title I, § 101; 1973 Ed., § 24-608.)

Section references. — This section is referred to in §§ 1-2702, 11-921, 24-601, 24-602, 24-604, 24-607, 24-609 to 24-611, and 24-614.

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners

under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

§ 24-609. Release of patient.

(a) When the head of the hospital to which the patient is committed finds that the patient appears to be no longer in need of confinement for treatment purposes, or has received maximum benefits, he shall give notice to the judge of the committing court, and said patient shall be delivered to the said court for such further action as the court may deem necessary and proper under the provisions of §§ 24-601 to 24-611.

(b) The court, upon petition of the patient after confinement for 1 year, shall inquire into the refusal or failure of the head of the hospital to release him. If the court finds that the patient is no longer in need of care, treatment, guidance, or rehabilitation, or has received maximum benefits, it shall order the patient released, in accordance with the provisions of § 24-610. (June 24, 1953, 67 Stat. 79, ch. 149, § 10; July 24, 1956, 70 Stat. 611, ch. 676, title I, § 101; 1973 Ed., § 24-609.)

Section references. — This section is referred to in §§ 1-2702, 11-921, 24-601, 24-602, 24-604, 24-607, 24-608, 24-610, 24-611, and 24-614.

§ 24-610. Periodic examination of released patients.

(a) For 2 years after his release, the patient shall report to the Mayor at such times and places as required, for a physical examination to determine whether the patient has again become a drug user. If the Mayor determines that the person examined is a drug user, he shall then order the patient into an institution in accordance with the provisions of §§ 24-601 to 24-611.

(b) Upon the failure of any patient to report in accordance with the provisions of subsection (a) of this section, the United States Attorney for the District of Columbia shall be notified of such failure, and a statement of such failure to report shall be filed with the court. The court shall issue an attachment for the patient and order him confined forthwith for examination and such further action as the court may deem necessary and proper under the provisions of §§ 24-601 to 24-611. (June 24, 1953, 67 Stat. 79, ch. 149, § 11; July 24, 1956, 70 Stat. 611, ch. 676, title I, § 101; 1973 Ed., § 24-610.)

Section references. — This section is referred to in §§ 1-2702, 11-921, 24-601, 24-602, 24-604, 24-607, 24-609 to 24-611, and 24-614.

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners

under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

§ 24-611. Patient not deemed a criminal.

The patient in any proceedings under §§ 24-601 to 24-611 shall not be deemed a criminal and the commitment of any such patient shall not be deemed a conviction. (June 24, 1953, 67 Stat. 79, ch. 149, § 12; July 24, 1956, 70 Stat. 612, ch. 676, title I, § 101; 1973 Ed., § 24-611.)

Section references. — This section is referred to in §§ 1-2702, 11-921, 24-601, 24-602, 24-604, 24-607, 24-609, 24-610, and 24-614.

This chapter is not a criminal statute. In re Whisaker, 134 F. Supp. 864 (D.D.C. 1955).

§ 24-612. Patient not deemed a criminal.

Omitted.

§ 24-613. Care and treatment of drug users; authority of Surgeon General.

(a) The Surgeon General is authorized to provide for the confinement, care, protection, treatment, and discipline of persons addicted to the use of habit-

forming narcotic drugs who are civilly committed to treatment under the Narcotic Addict Rehabilitation Act of 1966, addicts who voluntarily submit themselves for treatment, and addicts and other persons with drug abuse and drug dependence problems convicted of offenses against the United States and who are not sentenced to treatment under the Narcotic Addict Rehabilitation Act of 1966, including persons convicted by general courts-martial and consular courts. Such care and treatment shall be provided at hospitals of the Public Health Service especially equipped for the accommodation of such patients or elsewhere where authorized under other provisions of law, and shall be designed to rehabilitate such persons, to restore them to health, and, where necessary, to train them to be self-supporting and self-reliant; but nothing in this section or in §§ 257 to 261a of Title 42, United States Code, shall be construed to limit the authority of the Surgeon General under other provisions of law to provide for the conditional release of patients and for aftercare under supervision. In carrying out this subsection, the Secretary shall establish in each hospital and other appropriate medical facility of the Service a treatment and rehabilitation program for drug addicts and other persons with drug abuse and drug dependence problems who are in the area served by such hospital or other facility; except that the requirement of this sentence shall not apply in the case of any such hospital or other facility with respect to which the Secretary determines that there is not sufficient need for such a program in such hospital or other facility.

(b) Upon the admittance to, and departure from, a hospital of the Service of a person who voluntarily submitted himself for treatment pursuant to the provisions of this section, and who at the time of his admittance to such hospital was a resident of the District of Columbia, the Surgeon General shall furnish to the Mayor of the District of Columbia or his designated agent, the name, address, and such other pertinent information as may be useful in the rehabilitation to society of such person.

(c) The Secretary may enter into agreements with the Administrator of Veterans' Affairs, the Secretary of Defense, and the head of any other department or agency of the government under which agreements hospitals and other appropriate medical facilities of the Service may be used in treatment and rehabilitation programs provided by such department or agency for drug addicts and other persons with drug abuse and other drug dependence problems who are in areas served by such hospitals or other facilities. (July 1, 1944, 58 Stat. 698, ch. 373, title III, § 341; May 8, 1954, 68 Stat. 80, ch. 195, § 3; July 24, 1956, 70 Stat. 622, ch. 676, title III, § 302(a); Nov. 8, 1966, 80 Stat. 1449, Pub. L. 89-793, title VI, § 601; Oct. 27, 1970, 84 Stat. 1240, Pub. L. 91-513, title I, § 2(a)(1); Mar. 21, 1972, 86 Stat. 77, Pub. L. 92-255, § 402; 1973 Ed., § 24-613; Oct. 12, 1984, 98 Stat. 1837, Pub. L. 98-473, § 232(a).)

Section references. — This section is referred to in § 24-615.

References in text. — The Narcotic Addict Rehabilitation Act of 1966, referred to in subsection (a) of this section, is codified in 18 U.S.C. §§ 4251 to 4255, 28 U.S.C. §§ 2901 to 2906, and 42 U.S.C. §§ 3411 to 3426, 3441.

18 U.S.C. §§ 4251 to 4255 were repealed by Pub. L. 98-473, Title II, § 218(a)(6), 98 Stat. 2027 effective November 1, 1987 except that the sections remain applicable for five years to individuals who committed offense or acts prior to November 1, 1987.

Change in government. — This section

originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia,

respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

Transfer of functions. — All functions of Public Health Service, of the Surgeon General of the Public Health Service, and of all other officers and employees of the Public Health Service, and all functions of all agencies of or in the Public Health Service were transferred to the Secretary of Health, Education, and Welfare by 1966 Reorganization Plan No. 3, 80 Stat. 1610. The functions of the Department of Health, Education, and Welfare were transferred to the Department of Health and Human Services by the Act of October 17, 1979, 93 Stat. 695, Pub. L. 96-88, § 509.

§ 24-614. Admittance into Public Health Service hospitals; narcotics users from District.

(a) The Surgeon General is authorized to admit for care and treatment in any hospital of the Public Health Service suitably equipped therefor, and thereafter to transfer between hospitals of the Service in accordance with § 248b of Title 42, United States Code, any addict who is committed, under the provisions of §§ 24-601 to 24-611, to the Service or to a hospital thereof for care and treatment and who the Surgeon General determines is a proper subject for such care and treatment. No such addict shall be admitted unless:

(1) He is committed prior to July 1, 1958; and

(2) At the time of his commitment, the number of persons in hospitals of the Service who have been admitted pursuant to this subsection is less than 100; and

(3) Suitable accommodations are available after all eligible addicts convicted of offenses against the United States have been admitted.

(b) Any person admitted to a hospital of the Service pursuant to subsection (a) of this section shall be discharged therefrom: (1) upon order of the Superior Court of the District of Columbia; or (2) when he is found by the Surgeon General to be cured and rehabilitated. When any such person is so discharged, the Surgeon General shall give notice thereof to the Superior Court of the District of Columbia and shall deliver such person to such court for such further action as such court may deem necessary and proper under the provisions of §§ 24-601 to 24-611.

(c) With respect to the detention, transfer, parole, or discharge of any person committed to a hospital of the Service in accordance with subsection (a) of this section, the Surgeon General and the officer in charge of the hospital, in addition to authority otherwise vested in them, shall have such authority as may be conferred upon them, respectively, by the order of the committing court.

(d) The cost of providing care and treatment for persons admitted to a hospital of the Service pursuant to subsection (a) of this section shall be a charge upon the District of Columbia and shall be paid by the District of Columbia to the Public Health Service, either in advance or otherwise, as may

be determined by the Surgeon General. Such cost may be determined for each addict or on the basis of rates established for all or particular classes of patients, and shall include the cost of transportation to and from facilities or the Public Health Service. Moneys so paid to the Public Health Service shall be covered into the Treasury of the United States as miscellaneous receipts. Appropriations available for the care and treatment of addicts admitted to a hospital of the Service under this section shall be available, subject to regulations, for paying the cost of transportation to the District of Columbia, including subsistence allowance while traveling, for any such addict who is discharged. (July 1, 1944, ch. 373, title III, § 345; May 8, 1954, 68 Stat. 80, ch. 195, § 2; July 24, 1956, 70 Stat. 622, ch. 676, title III, § 302(c); July 29, 1970, 84 Stat. 572, Pub. L. 91-358, title I, § 155(c)(32); 1973 Ed., § 24-614.)

Section references. — This section is referred to in § 24-615.

Transfer of functions. — All functions of Public Health Service, of the Surgeon General of the Public Health Service, and of all other officers and employees of the Public Health Service, and all functions of all agencies of or in the Public Health Service were transferred to

the Secretary of Health, Education, and Welfare by 1966 Reorganization Plan No. 3, 80 Stat. 1610. The functions of the Department of Health, Education, and Welfare were transferred to the Department of Health and Human Services by the Act of October 17, 1979, 93 Stat. 695, Pub. L. 96-88, § 509.

§ 24-615. Release of patients.

For purposes of §§ 24-613 to 24-615, an individual shall be deemed cured of his addiction, drug abuse, or drug dependence and rehabilitated if the Surgeon General determines that he has received the maximum benefits of treatment and care by the Service for his addiction, drug abuse, or drug dependence or if the Surgeon General determines that his further treatment and care for such purpose would be detrimental to the interests of the Service. (July 1, 1944, ch. 373, title III, § 347; May 8, 1954, 68 Stat. 81, ch. 195, § 4; Oct. 27, 1970, 84 Stat. 1240, Pub. L. 91-513, title I, § 2(a)(4); 1973 Ed., § 24-615.)

Transfer of functions. — All functions of Public Health Service, of the Surgeon General of the Public Health Service, and of all other officers and employees of the Public Health Service, and all functions of all agencies of or in the Public Health Service were transferred to the Secretary of Health, Education, and Wel-

fare by 1966 Reorganization Plan No. 3, 80 Stat. 1610. The functions of the Department of Health, Education, and Welfare were transferred to the Department of Health and Human Services by the Act of October 17, 1979, 93 Stat. 695, Pub. L. 96-88, § 509.

CHAPTER 7. INTERSTATE AGREEMENT ON DETAINERS.

Sec.	Sec.
24-701. Enactment.	24-704. Regulations.
24-702. Definitions.	24-705. Reservation of authority.
24-703. Enforcement and cooperation required of parties.	

§ 24-701. Enactment.

The Interstate Agreement on Detainers is hereby enacted into law and entered into by the United States on its own behalf and on behalf of the District of Columbia with all jurisdictions legally joining in substantially the form set forth in this section.

The contracting States solemnly agree that:

ARTICLE I

The party States find that charges outstanding against a prisoner, detainers based on untried indictments, informations, or complaints and difficulties in securing speedy trial of persons already incarcerated in other jurisdictions, produce uncertainties which obstruct programs of prisoner treatment and rehabilitation. Accordingly, it is the policy of the party States and the purpose of this agreement to encourage the expeditious and orderly disposition of such charges and determination of the proper status of any and all detainers based on untried indictments, informations, or complaints. The party States also find that proceedings with reference to such charges and detainers, when emanating from another jurisdiction, cannot properly be had in the absence of cooperative procedures. It is the further purpose of this agreement to provide such cooperative procedures.

ARTICLE II

As used in this agreement:

- (a) "State" shall mean a State of the United States; the United States of America; a territory or possession of the United States; the District of Columbia; the Commonwealth of Puerto Rico.
- (b) "Sending State" shall mean a State in which a prisoner is incarcerated at the time that he initiates a request for final disposition pursuant to article III hereof or at the time that a request for custody or availability is initiated pursuant to Article IV hereof.
- (c) "Receiving State" shall mean the State in which trial is to be had on an indictment, information, or complaint pursuant to Article III or Article IV hereof.

ARTICLE III

(a) Whenever a person has entered upon a term of imprisonment in a penal or correctional institution of a party State, and whenever during the continuance of the term of imprisonment there is pending in any other party State any

untried indictment, information, or complaint on the basis of which a detainer has been lodged against the prisoner, he shall be brought to trial within one hundred and eighty days after he shall have caused to be delivered to the prosecuting officer and the appropriate court of the prosecuting officer's jurisdiction written notice of the place of his imprisonment and his request for a final disposition to be made of the indictment, information, or complaint; provided, that, for good cause shown in open court, the prisoner or his counsel being present, the court having jurisdiction of the matter may grant any necessary or reasonable continuance. The request of the prisoner shall be accompanied by a certificate of the appropriate official having custody of the prisoner, stating the term of commitment under which the prisoner is being held, the time already served, the time remaining to be served on the sentence, the amount of good time earned, the time of parole eligibility of the prisoner, and any decision of the State parole agency relating to the prisoner.

(b) The written notice and request for final disposition referred to in paragraph (a) hereof shall be given or sent by the prisoner to the warden, commissioner of corrections, or other official having custody of him, who shall promptly forward it together with the certificate to the appropriate prosecuting official and court by registered or certified mail, return receipt requested.

(c) The warden, commissioner of corrections, or other official having custody of the prisoner shall promptly inform him of the source and contents of any detainer lodged against him and shall also inform him of his right to make a request for final disposition of the indictment, information, or complaint on which the detainer is based.

(d) Any request for final disposition made by a prisoner pursuant to paragraph (a) hereof shall operate as a request for final disposition of all untried indictments, informations, or complaints on the basis of which detainers have been lodged against the prisoner from the State to whose prosecuting official the request for final disposition is specifically directed. The warden, commissioner of corrections, or other official having custody of the prisoner shall forthwith notify all appropriate prosecuting officers and courts in the several jurisdictions within the State to which the prisoner's request for final disposition is being sent of the proceeding being initiated by the prisoner. Any notification sent pursuant to this paragraph shall be accompanied by copies of the prisoner's written notice, request, and the certificate. If trial is not had on any indictment, information, or complaint contemplated hereby prior to the return of the prisoner to the original place of imprisonment, such indictment, information, or complaint shall not be of any further force or effect, and the court shall enter an order dismissing the same with prejudice.

(e) Any request for final disposition made by a prisoner pursuant to paragraph (a) hereof shall also be deemed to be a waiver of extradition with respect to any charge or proceeding contemplated thereby or included therein by reason of paragraph (b) hereof, and a waiver of extradition to the receiving State to serve any sentence there imposed upon him, after completion of his term of imprisonment in the sending State. The request for final disposition shall also constitute a consent by the prisoner to the production of his body in any court where his presence may be required in order to effectuate the

purposes of this agreement and a further consent voluntarily to be returned to the original place of imprisonment in accordance with the provisions of this agreement. Nothing in this paragraph shall prevent the imposition of a concurrent sentence if otherwise permitted by law.

(f) Escape from custody by the prisoner subsequent to his execution of the request for final disposition referred to in paragraph (a) hereof shall void the request.

ARTICLE IV

(a) The appropriate officer of the jurisdiction in which an untried indictment, information, or complaint is pending shall be entitled to have a prisoner against whom he has lodged a detainer and who is serving a term of imprisonment in any party State made available in accordance with Article V (a) hereof upon presentation of a written request for temporary custody or availability to the appropriate authorities of the State in which the prisoner is incarcerated; provided, that the court having jurisdiction of such indictment, information, or complaint shall have duly approved, recorded, and transmitted the request; and provided further, that there shall be a period of thirty days after receipt by the appropriate authorities before the request be honored, within which period the Governor of the sending State may disapprove the request for temporary custody or availability, either upon his own motion or upon motion of the prisoner.

(b) Upon request of the officer's written request as provided in paragraph (a) hereof, the appropriate authorities having the prisoner in custody shall furnish the officer with a certificate stating the term of commitment under which the prisoner is being held, the time already served, the time remaining to be served on the sentence, the amount of good time earned, the time of parole eligibility of the prisoner, and any decisions of the State parole agency relating to the prisoner. Said authorities simultaneously shall furnish all other officers and appropriate courts in the receiving State who has lodged detainers against the prisoner with similar certificates and with notices informing them of the request for custody or availability and of the reasons therefor.

(c) In respect of any proceeding made possible by this article, trial shall be commenced within one hundred and twenty days of the arrival of the prisoner in the receiving State, but for good cause shown in open court, the prisoner or his counsel being present, the court having jurisdiction of the matter may grant any necessary or reasonable continuance.

(d) Nothing contained in this article shall be construed to deprive any prisoner of any right which he may have to contest the legality of his delivery as provided in paragraph (a) hereof, but such delivery may not be opposed or denied on the ground that the executive authority of the sending State has not affirmatively consented to or ordered such delivery.

(e) If trial is not had on any indictment, information, or complaint contemplated hereby prior to the prisoner's being returned to the original place of imprisonment pursuant to article V (e) hereof, such indictment, information, or complaint shall not be of any further force or effect, and the court shall enter an order dismissing the same with prejudice.

ARTICLE V

(a) In response to a request made under Article III or Article IV hereof, the appropriate authority in a sending State shall offer to deliver temporary custody of such prisoner to the appropriate authority in the State where such indictment, information, or complaint is pending against such person in order that speedy and efficient prosecution may be had. If the request for final disposition is made by the prisoner, the offer of temporary custody shall accompany the written notice provided for in Article III of this agreement. In the case of a Federal prisoner, the appropriate authority in the receiving State shall be entitled to temporary custody as provided by this agreement or to the prisoner's presence in Federal custody at the place of trial, whichever custodial arrangement may be approved by the custodian.

(b) The officer or other representative of a State accepting an offer of temporary custody shall present the following upon demand:

(1) Proper identification and evidence of his authority to act for the State into whose temporary custody this prisoner is to be given.

(2) A duly certified copy of the indictment, information, or complaint on the basis of which the detainer has been lodged and on the basis of which the request for temporary custody of the prisoner has been made.

(c) If the appropriate authority shall refuse or fail to accept temporary custody of said person, or in the event that an action on the indictment, information, or complaint on the basis of which the detainer has been lodged is not brought to trial within the period provided in Article III or Article IV hereof, the appropriate court of the jurisdiction where the indictment, information, or complaint has been pending shall enter an order dismissing the same with prejudice, and any detainer based thereon shall cease to be of any force or effect.

(d) The temporary custody referred to in this agreement shall be only for the purpose of permitting prosecution on the charge or charges contained in one or more untried indictments, informations, or complaints which form the basis of the detainer or detainers or for prosecution on any other charge or charges arising out of the same transaction. Except for his attendance at court and while being transported to or from any place at which his presence may be required, the prisoner shall be held in a suitable jail or other facility regularly used for persons awaiting prosecution.

(e) At the earliest practicable time consonant with the purposes of this agreement, the prisoner shall be returned to the sending State.

(f) During the continuance of temporary custody or while the prisoner is otherwise being made available for trial as required by this agreement, time being served on the sentence shall continue to run but good time shall be earned by the prisoner only if, and to the extent that, the law and practice of the jurisdiction which imposed the sentence may allow.

(g) For all purposes other than that for which temporary custody as provided in this agreement is exercised, the prisoner shall be deemed to remain in the custody of and subject to the jurisdiction of the sending State and any escape from temporary custody may be dealt with in the same manner as

an escape from the original place of imprisonment or in any other manner permitted by law.

(h) From the time that a party State receives custody of a prisoner pursuant to this agreement until such prisoner is returned to the territory and custody of the sending State, the State in which the one or more untried indictments, informations, or complaints are pending or in which trial is being had shall be responsible for the prisoner and shall also pay all costs of transporting, caring for, keeping, and returning the prisoner. The provisions of this paragraph shall govern unless the States concerned shall have entered into a supplementary agreement providing for a different allocation of costs and responsibilities as between or among themselves. Nothing herein contained shall be construed to alter or affect any internal relationship among the departments, agencies, and officers of and in the government of a party State, or between a party State and its subdivisions, as to the payment of costs, or responsibilities therefor.

ARTICLE VI

(a) In determining the duration and expiration dates of the time periods provided in Articles III and IV of this agreement, the running of said time periods shall be tolled whenever and for as long as the prisoner is unable to stand trial, as determined by the court having jurisdiction of the matter.

(b) No provision of this agreement, and no remedy made available by this agreement shall apply to any person who is adjudged to be mentally ill.

ARTICLE VII

Each State party to this agreement shall designate an officer who, acting jointly with like officers of other party States, shall promulgate rules and regulations to carry out more effectively the terms and provisions of this agreement, and who shall provide, within and without the State, information necessary to the effective operation of this agreement.

ARTICLE VIII

This agreement shall enter into full force and effect as to a party State when such State has enacted the same into law. A State party to this agreement may withdraw herefrom by enacting a statute repealing the same. However, the withdrawal of any State shall not affect the status of any proceedings already initiated by inmates or by State officers at the time such withdrawal takes effect, nor shall it affect their rights in respect thereof.

ARTICLE IX

This agreement shall be liberally construed so as to effectuate its purposes. The provisions of this agreement shall be severable and if any phrase, clause, sentence, or provision of this agreement is declared to be contrary to the constitution of any party State or of the United States or the applicability thereof to any government, agency, person, or circumstance is held invalid, the validity of the remainder of this agreement and the applicability thereof to any

government, agency, person, or circumstance shall not be affected thereby. If this agreement shall be held contrary to the constitution of any State party hereto, the agreement shall remain in full force and effect as to the remaining States and in full force and effect as to the State affected as to all severable matters.

(Dec. 9, 1970, 84 Stat. 1397, Pub. L. 91-538, § 2; 1973 Ed., § 24-701.)

Primary purpose of Interstate Agreement on Detainers is to encourage the expeditious disposition of charges pending against a prisoner in another jurisdiction and consequently to minimize the adverse impact of foreign prosecutions on rehabilitative programs undertaken during incarceration in the original jurisdiction. *Gale v. United States*, App. D.C., 391 A.2d 230 (1978), cert. denied, 439 U.S. 1133, 99 S. Ct. 1057, 59 L. Ed. 2d 96 (1979).

The primary purpose of this Agreement is to eliminate abuses such as delay in bringing prisoners to trial and interference with rehabilitation programs, which characterized the use of detainees prior to the adoption of the Agreement. *Kleinbart v. United States*, App. D.C., 426 A.2d 343 (1981).

This Agreement is designed to establish a uniform process for transporting prisoners for trial from a jurisdiction in which they are serving a sentence to a jurisdiction in which they have been charged with an offense. *Kleinbart v. United States*, App. D.C., 426 A.2d 343 (1981).

Purposes of Agreement are: (1) To minimize interference with a prisoner's treatment and rehabilitation that result from outstanding detainees based upon untried indictments lodged against him during the course of his imprisonment; and (2) to encourage the orderly and expeditious disposition of the criminal charges upon which these detainees are based. *Dobson v. United States*, App. D.C., 449 A.2d 1082 (1982), cert. denied, 464 U.S. 831, 104 S. Ct. 109, 78 L. Ed. 2d 111 (1983).

The principal purpose of the Interstate Agreement on Detainers is to ensure that a sentenced prisoner who has entered into the life of the institution to which he has been committed for a term of imprisonment not have programs of treatment and rehabilitation obstructed by numerous absences in connection with successive proceedings related to pending charges in another jurisdiction. *Murray v. District of Columbia*, 826 F. Supp. 4 (D.D.C. 1993), cert. denied, — U.S. —, 114 S. Ct. 1556, 128 L. Ed. 2d 203 (1994).

Nature of Interstate Agreement. — The Interstate Agreement on Detainers is a compact among the states and the federal government establishing procedures by which one jurisdiction may obtain temporary custody of a prisoner incarcerated in another jurisdiction

for trial on outstanding charges. *Murray v. District of Columbia*, 826 F. Supp. 4 (D.D.C. 1993), cert. denied, — U.S. —, 114 S. Ct. 1556, 128 L. Ed. 2d 203 (1994).

The Interstate Agreement on Detainers is a congressionally sanctioned interstate compact, and is therefore considered law of the United States. *Murray v. District of Columbia*, 826 F. Supp. 4 (D.D.C. 1993), cert. denied, — U.S. —, 114 S. Ct. 1556, 128 L. Ed. 2d 203 (1994).

Applicability. — The Interstate Agreement provisions are not applicable to any matters which may be under investigation in which the prisoner may be implicated, or at least those as to which the government may have an active intent to bring formal charges. *Parker v. United States*, App. D.C., 590 A.2d 504, cert. denied, 502 U.S. 973, 112 S. Ct. 451, 116 L. Ed. 2d 469 (1991).

This Agreement is not exclusive means of effecting transfer of prisoners between jurisdictions. *Kleinbart v. United States*, App. D.C., 426 A.2d 343 (1981).

Rights under Agreement can be waived. *Christian v. United States*, App. D.C., 394 A.2d 1 (1978), cert. denied, 442 U.S. 944, 99 S. Ct. 2889, 61 L. Ed. 2d 315 (1979); *Hill v. United States*, App. D.C., 434 A.2d 422 (1981), cert. denied, 454 U.S. 1151, 102 S. Ct. 1020, 71 L. Ed. 2d 307 (1982).

Where appellant's failure to press for disposition of pending charges was a consequence of his admission of them rather than his ignorance of them, this constituted a waiver of his right to trial within the 180-day period set forth in Article III(a) of this section. *Smith v. United States*, App. D.C., 470 A.2d 315 (1983), cert. denied, 469 U.S. 1218, 105 S. Ct. 1201, 84 L. Ed. 2d 344 (1985).

And constitutional standard inapplicable. — The traditional standard for waiver of constitutional rights (a knowing and intelligent waiver) does not apply to waiver of a defendant's statutory right under the Agreement. *Christian v. United States*, App. D.C., 394 A.2d 1 (1978), cert. denied, 442 U.S. 944, 99 S. Ct. 2889, 61 L. Ed. 2d 315 (1979).

Waiver generally. — Absent good cause shown, failure to present a claim under the Interstate Agreement on Detainers at the trial level constitutes a waiver of those rights under Superior Court Criminal Rule 12(d) even if provisions of the IAD were violated, and the

waiver need not be a waiver in fact (i.e., there need not be an intentional relinquishment of a known right) because rights afforded under the IAD are of a class which are inferentially waived if not raised prior to or during trial. *Jenkins v. United States*, App. D.C., 483 A.2d 660 (1984), cert. denied, 469 U.S. 1224, 105 S. Ct. 1215, 84 L. Ed. 2d 356 (1985).

A defendant was held to have effectively waived any objections to alleged violations of the Interstate Agreement on Detainers by choosing to go to trial. *United States v. Haigler*, 113 WLR 1985 (Super. Ct. 1985).

Defendant's failure to raise the issue of his Interstate Agreements on Detainers Act rights prior to or during trial constituted a waiver of those rights. *United States v. Jones*, 120 WLR 2441 (Super. Ct. 1992).

Actual inability of receiving jurisdiction to obtain defendant's physical presence renders him unable to stand trial there, equally when due to the custodial jurisdiction's refusal as when due to that jurisdiction's having first delivered the defendant to some third jurisdiction. *United States v. Jones*, 120 WLR 2441 (Super. Ct. 1992).

Neither the terms nor the purposes of the Interstate Agreement on Detainers Act would be served by treating defendant as able to stand trial in the District of Columbia while he was in Maryland's custody, nor would those terms or purposes be served by imposing upon the government an obligation to seek defendant's earlier return to the District under circumstances in which the government had no reason to suspect any such obligation, so that while defendant was unable to stand trial within the meaning of Article VI(a) during the entire time he was in Maryland's custody, the 120-day period of Article IV(c) was tolled. *United States v. Jones*, 120 WLR 2441 (Super. Ct. 1992).

A prisoner's return to the sending jurisdiction after a brief stay for pretrial proceedings in the receiving jurisdiction did not warrant dismissal of an indictment under Article IV(e) where no interference with the prisoner's rehabilitation program in the sending state had been shown. *United States v. Jones*, 120 WLR 2441 (Super. Ct. 1992).

Claim that Agreement has been violated should be raised at earliest possible time before the witnesses and the parties have gone to the burden and expense of a trial. *Christian v. United States*, App. D.C., 394 A.2d 1 (1978), cert. denied, 442 U.S. 944, 99 S. Ct. 2889, 61 L. Ed. 2d 315 (1979).

District not separate sovereign. — The District of Columbia does not acquire the attributes of separate sovereignty by virtue of its being a party to the Interstate Agreement on Detainers. *Goode v. Markley*, 603 F.2d 973 (D.C. Cir. 1979), cert. denied, 444 U.S. 1083, 100 S. Ct. 1039, 62 L. Ed. 2d 768 (1980).

Nor actual state. — Although Article II of the Agreement includes the District of Columbia within the definition of "state," that is merely a definitional device in which the legislature indulged as a matter of convenience and by no means transforms the District of Columbia into an actual state. *Goode v. Markley*, 603 F.2d 973 (D.C. Cir. 1979), cert. denied, 444 U.S. 1083, 100 S. Ct. 1039, 62 L. Ed. 2d 768 (1980).

Obligation of receiving jurisdiction to bring individual to trial. — Only when a person has entered upon a term of imprisonment in a penal or correctional institution is a jurisdiction that receives that individual pursuant to a detainer and a written request for custody under an obligation to bring that individual to trial within the time limits of the Interstate Agreement on Detainers Act. *Bean v. United States*, App. D.C., 409 A.2d 1064 (1979).

Notice to prisoner sufficient though not in compliance with Article III(c). — Written notice of a detainer, even though it did not strictly comply with the notification provision of Article III(c), was sufficient and was received promptly enough to impose the burden of substantial compliance with the Agreement on the prisoner, who was obliged to direct a written request for a speedy trial to the District in order to trigger the 180-day period. *McBride v. United States*, App. D.C., 393 A.2d 123 (1978), cert. denied, 440 U.S. 927, 99 S. Ct. 1260, 59 L. Ed. 2d 482 (1979).

Purpose of Article IV(e). — Article IV(e) was designed to promote the speedy disposition of outstanding charges and to avoid shuttling back and forth between jurisdictions and disrupting consistent treatment programs. *Christian v. United States*, App. D.C., 394 A.2d 1 (1978), cert. denied, 442 U.S. 944, 99 S. Ct. 2889, 61 L. Ed. 2d 315 (1979); *Hill v. United States*, App. D.C., 434 A.2d 422 (1981), cert. denied, 454 U.S. 1151, 102 S. Ct. 1020, 71 L. Ed. 2d 307 (1982).

Prisoner's right under Article IV(e) neither fundamental nor constitutional. — The right of a prisoner under Article IV(e) not to be transferred back to his original place of imprisonment before he is tried is neither fundamental nor constitutional. *Christian v. United States*, App. D.C., 394 A.2d 1 (1978), cert. denied, 442 U.S. 944, 99 S. Ct. 2889, 61 L. Ed. 2d 315 (1979).

And normally waived if not asserted at trial. — Absent a miscarriage of justice, an error seriously affecting the status of the judicial system, or good cause shown, the failure to present a claim under Article IV(e) at the trial level constitutes a waiver of those rights under Super. Ct. Cr. R. 12(d). *Christian v. United States*, App. D.C., 394 A.2d 1 (1978), cert. denied, 442 U.S. 944, 99 S. Ct. 2889, 61 L. Ed. 2d 315 (1979).

One hundred eighty-day period held properly tolled under Article III(a). — See *Baylor v. United States*, App. D.C., 500 A.2d 1012 (1985).

Application of speedy trial limitation where prisoner initiates request for final disposition. — The 180-day limitation, rather than the 120-day limitation on speedy trial under the Interstate Agreement on Detainers Act (IAD), applies whenever the prisoner initiates the request for a final disposition of charges, irrespective of the means by which custody of the prisoner is obtained. *Felix v. United States*, App. D.C., 508 A.2d 101 (1986).

Thirty-day period of Article IV(a) is maximum period for state's action on a request following a detainer and not a minimum period during which a state cannot yield custody. *Dobson v. United States*, App. D.C., 449 A.2d 1082 (1982), cert. denied, 464 U.S. 831, 104 S. Ct. 109, 78 L. Ed. 2d 111 (1983).

Applicability of Article IV(c) 120-day limit to multiple trials based on single indictment. — Where custody has been obtained under a single indictment but multiple trials are held under a defendant's motion for severance, the 120-day limit of Article IV(c) of the Interstate Agreement on Detainers is not violated when at least 1 trial is held within the statutory period and the others are begun within a reasonable time. *Sonneville v. Stedef, Inc.*, App. D.C., 449 A.2d 1087 (1982).

Prejudice not required. — A requirement of prejudice is found neither in the agreement nor in its interpretations. *Haigler v. United States*, App. D.C., 531 A.2d 1236 (1987).

"Complaint" defined. — The coupling of the word "complaint" with indictment and information is a solid indication that "complaint" refers to a formal document of some type initiating criminal action against an individual, and not inchoate matters with respect to which no court proceedings of any sort have been initiated. *Parker v. United States*, App. D.C., 590 A.2d 504, cert. denied, 502 U.S. 973, 112 S. Ct. 451, 116 L. Ed. 2d 469 (1991).

Continuances. — The government has an affirmative duty to make a record on the question of whether continuances have been granted for good cause in keeping with Article IV(c) of this section. *Haigler v. United States*, App. D.C., 531 A.2d 1236 (1987).

In order for continuances granted due to court congestion to constitute continuances granted for "good cause," there must be documented or recorded evidence that the trial court took affirmative steps to try the defendant within the applicable time limits. *Haigler v. United States*, App. D.C., 531 A.2d 1236 (1987).

Article IV inapplicable to final proceedings on parole revocation. — A prisoner awaiting final proceedings on revocation of pa-

role is not entitled to the protection of Article IV. *Hill v. United States*, App. D.C., 434 A.2d 422 (1981), cert. denied, 454 U.S. 1151, 102 S. Ct. 1020, 71 L. Ed. 2d 307 (1982).

Mandatory action under Article V(a). — Article V(a) of the Agreement sets forth the mandatory action to be taken by the sending state once a proper request for transfer has been made. *Vance v. United States*, App. D.C., 399 A.2d 52 (1979).

Meaning of detainer. — A detainer is not a demand for the immediate surrender of a prisoner but only a request from the official lodging the detainee that he be notified before the inmate is released from custody. *Christian v. United States*, App. D.C., 394 A.2d 1 (1978), cert. denied, 442 U.S. 944, 99 S. Ct. 2889, 61 L. Ed. 2d 315 (1979).

A detainer under the Agreement generally refers to a document filed on an untried indictment, information, or complaint. *Goode v. Markley*, 603 F.2d 973 (D.C. Cir. 1979), cert. denied, 444 U.S. 1083, 100 S. Ct. 1039, 62 L. Ed. 2d 768 (1980).

A detainer is a notification filed with the institution in which a prisoner is serving a sentence advising that he is wanted to face pending criminal charges in another jurisdiction. *Dobson v. United States*, App. D.C., 449 A.2d 1082 (1982), cert. denied, 464 U.S. 831, 104 S. Ct. 109, 78 L. Ed. 2d 111 (1983).

Jurisdiction of receiving state. — When the original count for which a detainer was lodged, and defendant's delivery obtained, was dismissed, the provisions of Art. V(d) and (e) did not deprive the District's court of jurisdiction over 5 additional counts on which the defendant was indicted after his delivery to the District. *Parker v. United States*, App. D.C., 590 A.2d 504, cert. denied, 502 U.S. 973, 112 S. Ct. 451, 116 L. Ed. 2d 469 (1991).

Obligation to return prisoner to sending state. — Where defendant's presence depended upon the Interstate Agreement, the District was under obligation to return defendant to Maryland once it had dismissed the charges upon which the detainer was based, at least upon the request of either the prisoner or the sending state. *Parker v. United States*, App. D.C., 590 A.2d 504, cert. denied, 502 U.S. 973, 112 S. Ct. 451, 116 L. Ed. 2d 469 (1991).

Lodging of detainer. — An outstanding indictment in another state generates no Art. III rights in and of itself; the key is the lodging of a detainer based on that untried indictment. *Parker v. United States*, App. D.C., 590 A.2d 504, cert. denied, 502 U.S. 973, 112 S. Ct. 451, 116 L. Ed. 2d 469 (1991).

Arrest warrant as detainer. — Under this section, an arrest warrant will serve as a detainer within the purview of the Interstate Agreement on Detainers (IAD) if: (1) it is based on an untried information, indictment, or com-

plaint; (2) it is filed by a criminal justice agency; (3) it is filed directly with the facility where a prisoner is incarcerated; (4) it notifies prison officials that a prisoner is wanted to face pending charges; and (5) it asks the institution where the prisoner is incarcerated either to hold the prisoner at the conclusion of the prisoner's sentence, or to notify agency officials when the prisoner's release is imminent. Where all five of these criteria are satisfied, an arrest warrant is plainly "lodged" as a detainer, and the provisions of the IAD come into play. *Tucker v. United States*, App. D.C., 569 A.2d 162 (1990).

Where it is unclear whether warrants were lodged as detainers the "functional analysis" approach is employed which focuses on two issues: (1) whether District of Columbia officials intended the warrant to serve as a detainer; and (2) whether the defendant suffered any prejudice during his incarceration in the party state on account of the warrant. *Tucker v. United States*, App. D.C., 569 A.2d 162 (1990).

Although the warrants for defendant's arrest provided South Carolina prison officials with notice of District of Columbia charges pending against him, mere notice of pending criminal charges is insufficient to invoke the provisions of the Interstate Agreement on Detainers, and in the absence of intent to lodge a detainer, defendant must show that the existence of the warrant in his files prejudiced him, either through harassment from filing of detainers based on groundless charges or interference with his rehabilitative program. *Tucker v. United States*, App. D.C., 569 A.2d 162 (1990).

Agreement applicable whether prosecutor is U.S. Attorney or Corporation Counsel. — Detainers filed against federal prisoners arising out of alleged violations of the D.C. Code to be prosecuted in the Superior Court of the District of Columbia are subject to the requirements of the Interstate Agreement on Detainers regardless of whether the prosecutor is the United States Attorney or the District of Columbia Corporation Counsel. *United States v. Bailey*, App. D.C., 495 A.2d 756 (1985).

Prerequisites to invocation of Agreement. — The filing of a detainer and the submission of a written request for custody are necessary prerequisites to invocation of the Agreement. *Dobson v. United States*, App. D.C., 449 A.2d 1082 (1982), cert. denied, 464 U.S. 831, 104 S. Ct. 109, 78 L. Ed. 2d 111 (1983).

Brief, mistaken transfer of prisoner did not warrant dismissal of indictment. — When a transfer cannot be said to have been an abuse of the privilege of easy access and when an appellant has not shown that a very brief, mistaken transfer affected his rehabilitation, dismissal of the indictment would not further the purposes of the Interstate Agreement on Detainers and therefore is not warranted.

Malone v. United States, App. D.C., 482 A.2d 768 (1984).

Prisoner incarcerated in temporary "transit unit" by sending state. — The speedy trial provisions of the Interstate Agreement on Detainers Act (IAD) apply to a prisoner who has been convicted and sentenced, but for administrative reasons is incarcerated by the sending state in a temporary "transit unit," and is awaiting transfer to a permanent correctional institution. *Felix v. United States*, App. D.C., 508 A.2d 101 (1986).

Active enrollment in specific rehabilitation program is not stated prerequisite to invocation of the Interstate Agreement on Detainers Act's (IAD's) protections. *Felix v. United States*, App. D.C., 508 A.2d 101 (1986).

Agreement does not become pertinent until individual is tried, convicted, and sentenced in another jurisdiction. *Bean v. United States*, App. D.C., 409 A.2d 1064 (1979).

Prisoner must be entered upon term of imprisonment. — A prisoner temporarily incarcerated pending disposition of charges is not entitled to invoke the protections of the Agreement. *Christian v. United States*, App. D.C., 394 A.2d 1 (1978), cert. denied, 442 U.S. 944, 99 S. Ct. 2889, 61 L. Ed. 2d 315 (1980); *Hill v. United States*, App. D.C., 434 A.2d 422 (1981), cert. denied, 454 U.S. 1151, 102 S. Ct. 1020, 71 L. Ed. 2d 307 (1982).

Where at the time of their transfers to the District of Columbia prisoners were confined in local Philadelphia facilities pending disposition of outstanding charges, they had not entered upon a "term of imprisonment" within the meaning of the Agreement, and so its provisions did not apply to them. *Christian v. United States*, App. D.C., 394 A.2d 1 (1978), cert. denied, 442 U.S. 944, 99 S. Ct. 2889, 61 L. Ed. 2d 315 (1980).

"Come-up" order not a detainer. — A "come-up" order, which is an administrative notice from a Superior Court clerk's office to the United States Marshall's Service to produce a prisoner, is not a detainer within the meaning of the Agreement. *United States v. Palmer*, App. D.C., 393 A.2d 143 (1978).

Whereas the granting of a "come-up" order is routine and rarely the product of an independent judicial determination, a detainer, the filing of which does not in and of itself effect the transfer of a prisoner from 1 authority to another, requires an additional judicial or executive decision similar to that made in a removal or extradition proceeding. *Gale v. United States*, App. D.C., 391 A.2d 230 (1978), cert. denied, 439 U.S. 1133, 99 S. Ct. 1057, 59 L. Ed. 2d 96 (1979).

A "come-up" order involves only the intra-jurisdictional transfer of prisoners and thus differs from a detainer, which is a notice to authorities in a foreign jurisdiction that a

named individual is wanted on a felony or arrest warrant for criminal proceedings in the issuing jurisdiction. *Gale v. United States*, App. D.C., 391 A.2d 230 (1978), cert. denied, 439 U.S. 1133, 99 S. Ct. 1057, 59 L. Ed. 2d 96 (1979).

Effects of “come-up” order similar to writ of habeas corpus ad prosequendum. — Because a “come-up” order works the same limited intrusion into the institutional life of its subject as a federal writ of habeas corpus ad prosequendum, it is not to be regarded as a detainer. *Gale v. United States*, App. D.C., 391 A.2d 230 (1978), cert. denied, 439 U.S. 1133, 99 S. Ct. 1057, 59 L. Ed. 2d 96 (1979).

Federal writ of habeas corpus ad prosequendum not a detainer. — A writ of habeas corpus ad prosequendum issued by a federal court to state authorities and directing the production of a state prisoner for trial on criminal charges is not a detainer within the meaning of the Agreement. *United States v. Palmer*, App. D.C., 393 A.2d 143 (1978); *Sheffield v. United States*, App. D.C., 397 A.2d 963, cert. denied, 441 U.S. 965, 99 S. Ct. 2414, 60 L. Ed. 2d 1071 (1979).

A writ of habeas corpus ad prosequendum is not a detainer within the meaning of the Agreement. *Kleinbart v. United States*, App. D.C., 426 A.2d 343 (1981).

The Interstate Agreement on Detainers does not apply to writs of habeas corpus ad prosequendum because such writs do not cause the problems created by detainers which the IAD was meant to relieve. *United States v. Cogdell*, 585 F.2d 1130 (D.C. Cir. 1978), rev'd on other grounds sub nom. *United States v. Bailey*, 444 U.S. 394, 100 S. Ct. 624, 62 L. Ed. 2d 575 (1980).

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does not apply where appellant was transferred pursuant to a writ of habeas corpus ad prosequendum and no detainer was ever filed. *Vance v. United States*, App. D.C., 399 A.2d 52 (1979).

Existence of District of Columbia armed robbery sentence is not equivalent to a detainer lodged by another sovereign under the Interstate Agreement on Detainers. *Goode v. Markley*, 603 F.2d 973 (D.C. Cir. 1979), cert. denied, 444 U.S. 1083, 100 S. Ct. 1039, 62 L. Ed. 2d 768 (1980).

Ineffective assistance of counsel. — An ineffectiveness claim grounded on failure to assert Interstate Agreement on Detainers Act rights is subject to review on a writ of habeas corpus or motion pursuant to § 23-110. *United States v. Jones*, 120 WLR 2441 (Super. Ct. 1992).

Failure to move for relief under the Interstate Agreement on Detainers Act cannot have constituted ineffective assistance of counsel if such a motion would have been unsuccessful. *United States v. Jones*, 120 WLR 2441 (Super. Ct. 1992).

Trial counsel's failure to move for dismissal based upon defendant's Interstate Agreement on Detainers Act rights did not fall below the standard of reasonableness under prevailing professional norms. *United States v. Jones*, 120 WLR 2441 (Super. Ct. 1992).

Cited in *Capers v. United States*, App. D.C., 403 A.2d 1155, cert. denied, 444 U.S. 934, 100 S. Ct. 280, 62 L. Ed. 2d 192 (1979); *Smallwood v. United States*, App. D.C., 407 A.2d 675 (1979); *United States v. Jones*, App. D.C., 423 A.2d 193 (1980); *United States v. Hawkins*, 110 WLR 1577 (Super. Ct. 1982); *Miles v. Rollins*, 733 F. Supp. 128 (D.D.C. 1990).

§ 24-702. Definitions.

(a) The term “Governor” as used in the Agreement on Detainers shall mean with respect to the United States, the Attorney General, and with respect to the District of Columbia, the Mayor of the District of Columbia.

(b) The term “appropriate court” as used in the Agreement on Detainers shall mean with respect to the United States, the courts of the United States, and with respect to the District of Columbia, the courts of the District of Columbia, in which indictments, informations, or complaints, for which disposition is sought, are pending. (Dec. 9, 1970, 84 Stat. 1402, Pub. L. 91-538, §§ 3, 4; 1973 Ed., § 24-702.)

Cross references. — As to listing of courts in which judicial power in District is vested, see § 11-101.

Change in government. — This section originated at a time when local government powers were delegated to the District of Columbia Council and to a Commissioner of the Dis-

trict of Columbia. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the Dis-

trict of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

Petition for writ of habeas corpus is not

appropriate means to redress violations of Interstate Agreement on Detainers. *King v. Palmer*, 113 WLR 2437 (Super. Ct. 1985).

Cited in *United States v. Bailey*, App. D.C., 495 A.2d 756 (1985).

§ 24-703. Enforcement and cooperation required of parties.

All courts, departments, agencies, officers, and employees of the United States and of the District of Columbia are hereby directed to enforce the Agreement on Detainers and to cooperate with one another and with all party states in enforcing the agreement and effectuating its purpose. (Dec. 9, 1970, 84 Stat. 1402, Pub. L. 91-538, § 5; 1973 Ed., § 24-703.)

Cross references. — As to listing of courts in which judicial power in District is vested, see § 11-101.

§ 24-704. Regulations.

For the United States, the Attorney General, and for the District of Columbia, the Mayor of the District of Columbia, shall establish such regulations, prescribe such forms, issue such instructions, and perform such other acts as he deems necessary for carrying out the provisions of this chapter. (Dec. 9, 1970, 84 Stat. 1403, Pub. L. 91-538, § 6; 1973 Ed., § 24-704.)

Change in government. — This section originated at a time when local government powers were delegated to the District of Columbia Council and to a Commissioner of the District of Columbia. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the

District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

Cited in *United States v. Bailey*, App. D.C., 495 A.2d 756 (1985).

§ 24-705. Reservation of authority.

The right to alter, amend, or repeal this chapter is expressly reserved. (Dec. 9, 1970, 84 Stat. 1403, Pub. L. 91-538, § 7; 1973 Ed., § 24-705.)

CHAPTER 8. YOUTH REHABILITATION.

Sec.	Sec.
24-801. Definitions.	24-805. Determination that youth offender will derive no further benefit; appeal.
24-802. Facilities for treatment and rehabilitation.	24-806. Unconditional discharge sets aside conviction.
24-803. Sentencing alternatives.	24-807. Rules; division of responsibility.
24-804. Conditional release; unconditional discharge.	

§ 24-801. Definitions.

For purposes of this chapter, the term:

- (1) “Committed youth offender” means an individual committed pursuant to this chapter for treatment in the District of Columbia.
- (2) “Conviction” means the judgment on a verdict or a finding of guilty, a plea of guilty, or a plea of no contest.
- (3) “Court” means the Superior Court of the District of Columbia.
- (4) “District” means the District of Columbia.
- (5) “Treatment” means corrective and preventive guidance and training designed to protect the public by correcting the antisocial tendencies of youth offenders.
- (6) “Youth offender” means a person less than 22 years old convicted of a crime other than murder. (Dec. 7, 1985, D.C. Law 6-69, § 2, 32 DCR 4587.)

Legislative history of Law 6-69. — Law 6-69, the “Youth Rehabilitation Amendment Act of 1985,” was introduced in Council and assigned Bill No. 6-47, which was referred to the Committee on the Judiciary. The bill was adopted on first and second readings on June 25, 1985 and July 9, 1985, respectively. Signed by the Mayor on July 29, 1985, it was assigned Act No. 6-72 and transmitted to both Houses of Congress for its review.

Purpose of chapter. — The primary objectives of this chapter are: (1) To give the court flexibility in sentencing a youth offender according to his individual needs; (2) to separate youth offenders from more mature, experienced offenders; and (3) to provide an opportunity for a deserving youth offender to start anew through expungement of his criminal record. *United States v. Wheeler*, 115 WLR 2025 (Super. Ct. 1987).

Time as denial of eligibility. — Considering and balancing all relevant factors, the length and reasons for delay, appellant’s be-

lated interest in resolving the case, the absence of a direct request for a speedy trial, and the nature of the prejudice asserted, the Court of Appeals concluded that defendant was not deprived of his right to a speedy trial, even though defendant became ineligible for sentencing under this Act by the time of trial. *Dickerson v. United States*, App. D.C., 650 A.2d 680 (1994).

Cited in *United States v. Rogers*, 115 WLR 221 (Super. Ct. 1987); *Twelve John Does v. District of Columbia*, 841 F.2d 1133 (D.C. Cir. 1988); *United States v. Williams*, 116 WLR 1005 (Super. Ct. 1988); *Brown v. United States*, App. D.C., 554 A.2d 1157 (1989); *Brown v. United States*, App. D.C., 579 A.2d 1158 (1990); *Goodall v. United States*, App. D.C., 584 A.2d 560 (1990); *Latimore v. United States*, App. D.C., 597 A.2d 362 (1991); *Vaughn v. United States*, App. D.C., 598 A.2d 425 (1991); *United States v. Williams*, 121 WLR 2125 (Super. Ct. 1993); *Williams v. United States*, App. D.C., 656 A.2d 288 (1995); *United States v. Montgomery*, 123 WLR 1665 (Super. Ct. 1995).

§ 24-802. Facilities for treatment and rehabilitation.

- (a) The Mayor shall provide facilities and personnel for the treatment and rehabilitation of youth offenders convicted under District of Columbia law and sentenced according to this chapter.

(b)(1) The Mayor shall periodically set aside and adapt facilities for the treatment, care, education, vocational training, rehabilitation, segregation, and protection of youth offenders.

(2) Insofar as practical, these institutions shall treat committed youth offenders only, and the youth offenders shall be segregated from other offenders, and classes of committed youth offenders shall be segregated according to their needs for treatment. (Dec. 7, 1985, D.C. Law 6-69, § 3, 32 DCR 4587.)

Cross references. — As to provisions regarding escape from juvenile facilities, see § 9-130.1.

Legislative history of Law 6-69. — See note to § 24-801.

Cited in United States v. Wheeler, 115 WLR 2025 (Super. Ct. 1987).

§ 24-803. Sentencing alternatives.

(a)(1) If the court is of the opinion that the youth offender does not need commitment, it may suspend the imposition or execution of sentence and place the youth offender on probation.

(2) The court, as part of an order of probation of a youth offender between the ages of 15 and 18 years, shall require the youth offender to perform not less than 90 hours of community service for an agency of the District government or a nonprofit or other community service organization, unless the court determines that the youth offender is physically or mentally impaired and that an order of community service would be unjust or unreasonable.

(3) Within 120 days of January 31, 1990, the Mayor shall develop and furnish to the court a youth offender community service plan. The plan shall include:

(A) Procedures to certify a nonprofit or community service organization for participation in the program;

(B) A list of agencies of the District government or non-profit or community service organizations to which a youth offender may be assigned for community service work;

(C) A description of the community service work to be performed by a youth offender in each of the named agencies or organizations;

(D) Procedures to monitor the attendance and performance of a youth offender assigned to community service work;

(E) Procedures to report to the court a youth offender's absence from a court-ordered community service work assignment; and

(F) Procedures to notify the court that a youth offender has completed the community service ordered by the court.

(4) If the court unconditionally discharges a youth offender from probation pursuant to § 24-806(b), the court may discharge the youth offender from any uncompleted community service requirement in excess of 90 hours. The court shall not discharge the youth offender from completion of the minimum of 90 hours of community service.

(b) If the court shall find that a convicted person is a youth offender, and the offense is punishable by imprisonment under applicable provisions of law other

than this subsection, the court may sentence the youth offender for treatment and supervision pursuant to this chapter up to the maximum penalty of imprisonment otherwise provided by law. The youth offender shall serve the sentence of the court unless sooner released as provided in § 24-804.

(c) Where the court finds that a person is a youth offender and determines that the youth offender will derive benefit from the provisions of this chapter, the court shall make a statement on the record of the reasons for its determination. The youth offender shall be entitled to present to the court facts that would affect the decision of the court to sentence the youth offender pursuant to the provisions of this chapter.

(d) If the court shall find that the youth offender will not derive benefit from treatment under subsection (b) of this section, then the court may sentence the youth offender under any other applicable penalty provision.

(e) If the court desires additional information as to whether a youth offender will derive benefit from treatment under subsection (b) of this section, the court may order that the youth offender be committed for observation and study at an appropriate classification center or agency. Within 60 days from the date of the order or an additional period that the court may grant, the court shall receive the report.

(f) Subsections (a) through (e) of this section provide sentencing alternatives in addition to the options already available to the court. (Dec. 7, 1985, D.C. Law 6-69, § 4, 32 DCR 4587; Jan. 31, 1990, D.C. Law 8-61, § 2, 36 DCR 5798.)

Legislative history of Law 6-69. — See note to § 24-801.

Legislative history of Law 8-61. — Law 8-61, the “Youth Offender Community Service Amendment Act of 1989,” was introduced in Council and assigned Bill No. 8-138, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on June 27, 1989, and July 11, 1989, respectively. Signed by the Mayor on August 1, 1989, it was assigned Act No. 8-84 and transmitted to both Houses of Congress for its review.

Application of Law 8-61. — Section 4 of D.C. Law 8-61 provided that the act shall apply after September 30, 1989.

Delegation of authority pursuant to Law 6-69. — See Mayor’s Order 87-61, March 10, 1987.

Expert advice. — Although this Act is premised on the assumption that expert advice will aid the trial judge in deciding whether a defendant should be sentenced under the Act, the sentencing judge is not required to follow the expert’s recommendation. *Foster v. United States*, App. D.C., 615 A.2d 213 (1992).

Ex parte communications. — Trial judge’s initiation of an ex parte communication with the D.C. Parole Board regarding sentencing neither biased the trial judge’s opinion or caused the trial judge to receive ex parte information that appellant had no opportunity to challenge; therefore, the trial judge’s violation

of Canon 3(A)(4) of the A.B.A. Code of Judicial Conduct did not substantially prejudice appellant. *Foster v. United States*, App. D.C., 615 A.2d 213 (1992).

Revocation of probation and imposition of adult sentence. — Section 24-104 does not preclude the trial court from revoking Youth Rehabilitation Act probation (ordered in lieu of imposition of sentence) and then imposing an adult sentence. *Smith v. United States*, App. D.C., 597 A.2d 377 (1991).

If the trial court wishes to incarcerate a youth offender as an adult after revocation of Youth Rehabilitation Act probation, subsection (d) requires the trial court to make an explicit finding on the record that the youth offender no longer will “derive benefit” from Youth Rehabilitation Act supervision (although the court need not provide supporting reasons). *Smith v. United States*, App. D.C., 597 A.2d 377 (1991).

Case was remanded where sentencing judge did not make an explicit finding that the offender would not benefit from continued treatment under the Youth Rehabilitation Act before revoking probation and sentencing him as an adult. *Hendon v. United States*, App. D.C., 651 A.2d 814 (1994).

Length of confinement. — Upon revocation of probation, a sentence of confinement imposed under this chapter may exceed in length an adult sentence of incarceration originally imposed and suspended. *United States v. Wheeler*, 115 WLR 2025 (Super. Ct. 1987).

Child support payments as a condition of probation. — Under the Youth Rehabilitation Act, trial judge did not exceed her authority in setting child support, which was payable as a condition of probation, but did abuse her discretion in summarily determining the amount. *Brown v. United States*, App. D.C., 579 A.2d 1158 (1990).

Cited in *McMillan v. United States*, App. D.C., 527 A.2d 739 (1987); *United States v. Brown*, 115 WLR 1821 (Super. Ct. 1987); *United States v. Duncan*, 115 WLR 2517 (Super. Ct. 1987); *District of Columbia v. Sellers*,

117 WLR 1017 (Super. Ct. 1989); *Allen v. United States*, App. D.C., 580 A.2d 653 (1990); *United States v. Green*, App. D.C., 592 A.2d 985 (1991), cert. dismissed, 507 U.S. 545, 113 S. Ct. 1835, 123 L. Ed. 2d 260 (1993); *Hopkins v. United States*, App. D.C., 595 A.2d 995 (1991); *United States v. Simpson*, 119 WLR 1229 (Super. Ct. 1991); *Taylor v. United States*, App. D.C., 603 A.2d 451, cert. denied, 506 U.S. 852, 113 S. Ct. 155, 121 L. Ed. 2d 105 (1992); *United States v. Long*, 121 WLR 1045 (Super. Ct. 1993); *United States v. Williams*, 121 WLR 2125 (Super. Ct. 1993).

§ 24-804. Conditional release; unconditional discharge.

(a) A committed youth offender may be released conditionally under supervision whenever appropriate.

(b) A committed youth offender may be unconditionally discharged at the end of 1 year from the date of conditional release. (Dec. 7, 1985, D.C. Law 6-69, § 5, 32 DCR 4587.)

Section references. — This section is referred to in § 24-803.

Legislative history of Law 6-69. — See note to § 24-801.

Expungement of records. — Because of the interaction of subsection (b) and § 24-806(a), only youthful offenders who receive sentences in excess of one year will ever have an

opportunity to obtain expungement of their records under the Youth Rehabilitation Act; those receiving sentences of one year or less cannot obtain that benefit. *Latimore v. United States*, App. D.C., 597 A.2d 362 (1991).

Cited in *United States v. Wheeler*, 115 WLR 2025 (Super. Ct. 1987).

§ 24-805. Determination that youth offender will derive no further benefit; appeal.

(a) If the Director of the Department of Corrections (“Director”) determines that a youth offender will derive no further benefit from the treatment pursuant to this chapter, the Director shall notify the youth offender of this determination in a written statement that includes the following:

(1) Notice that the youth offender may appeal the Director’s determination to the sentencing judge in writing within 30 days of the youth offender’s receipt of the Director’s statement required by this section;

(2) Specific reasons for the Director’s no further benefit determination; and

(3) Notice that an appeal by the youth offender to the sentencing judge will stay any action by the Director regarding a change in the youth offender’s status until the sentencing judge makes a determination on the appeal.

(b) The decision of the sentencing judge on the appeal of the youth offender shall be considered a final disposition of the appeal and shall preclude further action by the Director to change the status of a youth offender for a 6-month period from the date of the sentencing judge’s decision. (Dec. 7, 1985, D.C. Law 6-69, § 6, 32 DCR 4587.)

Legislative history of Law 6-69. — See note to § 24-801.

“No benefit” findings. — A “no-benefit” finding is not required by this subchapter, the District of Columbia Youth Rehabilitation Act. *Veney v. United States*, App. D.C., 658 A.2d 625 (1995).

It is sufficient that trial court make a finding that a defendant would not derive a benefit from being sentenced under this Act, considering the overall record of sentencing, where the trial court explicitly considered the option of sentencing appellant under this act and rejected it. *Peterson v. United States*, App. D.C., 657 A.2d 756 (1995).

Appeal based on procedural violations. — A defendant will be precluded from presenting evidence of procedural violations in an appeal under this section, if he had timely

notice of his right to appeal and failed to exhaust his Departmental remedies. *Vaughn v. United States*, App. D.C., 598 A.2d 425 (1991).

The significant consequences for the prisoner who loses his youth offender status requires that on appeal to the sentencing judge he be permitted to raise the procedural deficiencies, if any, of the disciplinary proceedings which form the basis for the “no-further-benefit” determination. *Vaughn v. United States*, App. D.C., 598 A.2d 425 (1991).

Due process. — Where the government seeks to rely upon decisions in the disciplinary process as a basis for its “no-further-benefit” determination, the youth offender may raise in a hearing before the sentencing judge under this section, any due process challenges to the validity of the disciplinary decisions. *Vaughn v. United States*, App. D.C., 598 A.2d 425 (1991).

§ 24-806. Unconditional discharge sets aside conviction.

(a) Upon the unconditional discharge of a committed youth offender before the expiration of the maximum sentence imposed, the District of Columbia Board of Parole shall automatically set aside the conviction.

(b) If the maximum sentence of a committed youth offender expires before unconditional discharge, the District of Columbia Board of Parole may, in its discretion, set aside the conviction.

(c) In any case in which the District of Columbia Board of Parole sets aside the conviction of a committed youth offender, the Board shall issue to the youth offender a certificate to that effect.

(d) Where a youth offender has been placed on probation by the court, the court may, in its discretion, unconditionally discharge the youth offender from probation before the end of the maximum period of probation previously fixed by the court. The discharge shall automatically set aside the conviction and the court shall issue to the youth offender a certification to that effect. (Dec. 7, 1985, D.C. Law 6-69, § 7, 32 DCR 4587; June 28, 1991, D.C. Law 9-7, § 2, 38 DCR 1978; Aug. 17, 1991, D.C. Law 9-15, § 2, 38 DCR 3382.)

Section references. — This section is referred to in § 24-803.

Legislative history of Law 6-69. — See note to § 24-801.

Legislative history of Law 9-7. — Law 9-7, the “Youth Rehabilitation Amendment Act of 1985 Temporary Amendment Act of 1991,” was introduced in Council and assigned Bill No. 9-99. The Bill was adopted on first and second readings on February 5, 1991, and March 5, 1991, respectively. Signed by the Mayor on March 15, 1991, it was assigned Act No. 9-13 and transmitted to both Houses of Congress for its review.

Legislative history of Law 9-15. — Law 9-15, the “Youth Rehabilitation Amendment Act of 1985 Amendment Act of 1991,” was introduced in Council and assigned Bill No. 9-109,

which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on April 9, 1991, and May 7, 1991, respectively. Signed by the Mayor on May 17, 1991, it was assigned Act No. 9-33 and transmitted to both Houses of Congress for its review.

Application of Law 9-15. — Section 3 of D.C. Law 9-15 provided that the act shall apply as of September 30, 1987.

“Setting aside” and “expungement” distinguished. — Convictions excluded from the criminal history calculation are those in which the defendant was subsequently found innocent or which involved legal error, and are classified as “expunged.” Convictions removed from a defendant’s record to serve some social policy goal are “set aside,” within the meaning

of this section. *United States v. McDonald*, 991 F.2d 866 (D.C. Cir. 1993).

Appeal dismissed as moot. — Where trial court set aside defendant's conviction pursuant to this section, while the appeal was still pending, and without the appellate court's knowledge, the appellate court dismissed the appeal as moot and vacated their opinion. *Wilson v. United States*, App. D.C., 592 A.2d 480 (1991).

Because of the interaction of § 24-804(b) and subsection (a), only youthful offenders who re-

ceive sentences in excess of one year will ever have an opportunity to obtain expungement of their records under the Youth Rehabilitation Act; those receiving sentences of one year or less cannot obtain that benefit. *Latimore v. United States*, App. D.C., 597 A.2d 362 (1991).

Cited in *United States v. Wheeler*, 115 WLR 2025 (Super. Ct. 1987); *United States v. Shell*, 117 WLR 765 (Super. Ct. 1989); *Brown v. United States*, App. D.C., 579 A.2d 1158 (1990).

§ 24-807. Rules; division of responsibility.

The Mayor may issue rules to implement the provisions of this chapter pursuant to subchapter I of Chapter 15 of Title 1, including the division of responsibility between the District of Columbia Board of Parole and the District of Columbia Department of Corrections. (Dec. 7, 1985, D.C. Law 6-69, § 8, 32 DCR 4587.)

Legislative history of Law 6-69. — See note to § 24-801.

Delegation of authority pursuant to Law 6-69. — See Mayor's Order 87-61, March 10, 1987.

Cited in *Brown v. United States*, App. D.C., 554 A.2d 1157 (1989); *Foster v. United States*, App. D.C., 615 A.2d 213 (1992).

CHAPTER 8A. BOOT CAMP PROGRAM.

Sec.	Sec.
24-821. Definitions.	24-827. Grooming.
24-822. Establishment of the BOOT CAMP.	24-828. Agreement form.
24-823. Location of BOOT CAMP.	24-829. Removal.
24-824. Daily schedule.	24-830. Graduation.
24-825. Evaluation process.	24-831. Post-BOOT CAMP supervision.
24-826. Discipline.	24-832. Report.

§ 24-821. Definitions.

For the purposes of this chapter, the term:

(1) “BOOT CAMP” means the Basic Operations Options Training Children to Adults Maturity Program for eligible juvenile offenders, established pursuant to the rules of the Department of Human Services adopted under this chapter, which provides rigorous physical activity, intensive regimentation, discipline, education, and vocational training for a minimum of 40 participants, to begin the program, for a period of 90 days.

(2) “Eligible juvenile offender” means a youth 14 through 18 years of age who has been committed to the custody of the Youth Services Administration and who:

(A) Has not been previously incarcerated in an adult prison facility and has not committed a crime of violence, as defined in § 22-3201, except burglary and robbery;

(B) Has not been prohibited by a judge or law from participating in the BOOT CAMP;

(C) Has no known contagious or communicable disease;

(D) Has no known mental or physical impairments that would prevent him or her from performing physical activity; and

(E) Agrees to the terms and conditions of the BOOT CAMP. (Jan. 27, 1994, D.C. Law 10-67, § 101, 40 DCR 5768.)

Legislative history of Law 10-67. — Law 10-67, the “Basic Operations Options Training Children to Adults Maturity Program Establishment Act of 1993,” was introduced in Council and assigned Bill No. 10-111, which was referred to the Committee on Human Services. The Bill was adopted on first and second readings on June 29, 1993, and July 13, 1993, respectively. Signed by the Mayor on July 29, 1993, it was assigned Act No. 10-67 and transmitted to both Houses of Congress for its review. D.C. Law 10-67 became effective on January 27, 1994.

Mayor authorized to issue rules. — Section 701 of D.C. Law 10-67 provided that the

Mayor shall issue proposed rules, pursuant to subchapter I of Chapter 15 of Title 1, to implement the provisions of this chapter. The proposed rules shall be submitted to the Council of the District of Columbia for a 45-day period of review, excluding Saturdays, Sundays, legal holidays, and days of Council recess. If the Council does not approve or disapprove the proposed rules, in whole or in part, by resolution within the 45-day review period, the proposed rules shall be deemed approved. Nothing in this section shall affect any requirements imposed upon the Mayor by subchapter I of Chapter 15 of Title 1.

§ 24-822. Establishment of the BOOT CAMP.

The Director of the Department of Human Services (“Director”) shall establish a BOOT CAMP that may be used for eligible juvenile offenders who

the Department of Human Services may permit to serve their commitment in the BOOT CAMP. (Jan. 27, 1994, D.C. Law 10-67, § 201, 40 DCR 5768.)

Legislative history of Law 10-67. — See note to § 24-821.

§ 24-823. Location of BOOT CAMP.

(a) The Director shall use an existing building or set of buildings, which may be located in the Washington Metropolitan area, to establish a residential center for the BOOT CAMP participants.

(b) The residential center shall include classrooms, a counseling and vocational training center, separate sleeping accommodations for male and female participants, a dining facility, outdoor drill and recreation areas, and other usages that are necessary for the efficient operation of the BOOT CAMP. (Jan. 27, 1994, D.C. Law 10-67, § 202, 40 DCR 5768.)

Legislative history of Law 10-67. — See note to § 24-821.

§ 24-824. Daily schedule.

The daily schedule at the BOOT CAMP shall include:

(1) An early morning regimen of physical training, military style drilling, and cleaning of residence areas;

(2) Education designed to result in the attainment of a General Equivalency Diploma (“GED”), which may utilize as academic teachers persons who have volunteered their services to the program and who satisfy the appropriate certification criteria;

(3) Vocational training in an employment skill, including wood shop, electrical work, and plumbing, which may utilize as vocational teachers persons who have volunteered their services to the program and who satisfy the appropriate certification criteria;

(4) Employment counseling and a full range of counseling, to include life skills training and stress and anger management;

(5) Appropriate physical labor; and

(6) Daily group meetings, substance abuse counseling, and organized physical recreation. (Jan. 27, 1994, D.C. Law 10-67, § 203, 40 DCR 5768.)

Legislative history of Law 10-67. — See note to § 24-821.

§ 24-825. Evaluation process.

The Director shall establish a system of evaluating the eligible juvenile offenders, with the purpose of obtaining an objective assessment of each eligible juvenile offender’s progress in the BOOT CAMP. The system of evaluation may include weekly evaluations by drill instructors, academic and vocational teachers, substance abuse counselors, and recreation leaders. The results of these evaluations may be used in determining the juvenile offender’s

eligibility for conditional release or unconditional discharge at the end of the BOOT CAMP. (Jan. 27, 1994, D.C. Law 10-67, § 204, 40 DCR 5768.)

Legislative history of Law 10-67. — See note to § 24-821.

§ 24-826. Discipline.

(a) Eligible juvenile offenders are expected to adhere to strict standards of discipline within the BOOT CAMP. Eligible juvenile offenders in the BOOT CAMP will be expected to comply with the following procedures:

- (1) Stand-up count;
- (2) Keeping living areas clean and neat at all times;
- (3) Mandatory attendance at all scheduled functions; and
- (4) Exhibiting respectful behavior towards drill instructors and other personnel.

(b) The Director shall promulgate rules and procedures governing discipline within the BOOT CAMP. (Jan. 27, 1994, D.C. Law 10-67, § 205, 40 DCR 5768.)

Legislative history of Law 10-67. — See note to § 24-821.

§ 24-827. Grooming.

The Director shall promulgate regulations regarding grooming habits. (Jan. 27, 1994, D.C. Law 10-67, § 206, 40 DCR 5768.)

Legislative history of Law 10-67. — See note to § 24-821.

§ 24-828. Agreement form.

The Director shall promulgate an agreement to be signed by each eligible juvenile offender prior to entering into the BOOT CAMP. The agreement shall describe the terms and conditions of the BOOT CAMP, including a provision that states that participation in the BOOT CAMP is a privilege which may be revoked at any time at the discretion of the Director. (Jan. 27, 1994, D.C. Law 10-67, § 301, 40 DCR 5768.)

Legislative history of Law 10-67. — See note to § 24-821.

§ 24-829. Removal.

An eligible juvenile offender participating in the BOOT CAMP may be removed at the discretion of the Director. The Director shall promulgate rules and procedures for removal of an eligible juvenile offender from the BOOT CAMP. The rules and procedures shall include the following provisions:

- (1) Removal from the BOOT CAMP for any reason shall be treated as a violation of conditional release.

(2) An eligible juvenile offender may petition for removal from the program. The Director shall grant the petition for removal upon a finding of good cause. (Jan. 27, 1994, D.C. Law 10-67, § 401, 40 DCR 5768; May 16, 1995, D.C. Law 10-255, § 19, 41 DCR 5193.)

Effect of amendments. — D.C. Law 10-255 validated a previously made paragraph designation change.

Legislative history of Law 10-67. — See note to § 24-821.

Legislative history of Law 10-255. — Law 10-255, the “Technical Amendments Act of 1994,” was introduced in Council and assigned

Bill No. 10-673, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on June 21, 1994, and July 5, 1994, respectively. Signed by the Mayor on July 25, 1994, it was assigned Act No. 10-302 and transmitted to both Houses of Congress for its review. D.C. Law 10-255 became effective May 16, 1995.

§ 24-830. Graduation.

Upon completion of the BOOT CAMP, a graduation ceremony may be held, at which time earned GED’s may be awarded, as well as other appropriate recognition. (Jan. 27, 1994, D.C. Law 10-67, § 501, 40 DCR 5768.)

Legislative history of Law 10-67. — See note to § 24-821.

§ 24-831. Post-BOOT CAMP supervision.

The Director shall promulgate rules establishing a program of continuing supervision for BOOT CAMP participants released on conditional release. The program shall be 9 months in length and shall include participation by the eligible juvenile offender’s family members. The program may include follow-up substance abuse treatment, educational assistance such as tutoring, assistance in seeking employment, and, if appropriate, inclusion in the Mayor’s Mentoring and Volunteerism program, created pursuant to Mayor’s Order 92-24 dated March 4, 1992. The program may utilize volunteers. (Jan. 27, 1994, D.C. Law 10-67, § 502, 40 DCR 5768.)

Legislative history of Law 10-67. — See note to § 24-821.

§ 24-832. Report.

The Director shall prepare a report assessing the BOOT CAMP, which shall be presented to the Mayor and the Council of the District of Columbia 12 months after the first day of operation of the BOOT CAMP. This report shall include the following:

(1) A summary of the original structure of the pilot program, and a summary of all changes to that original structure, along with the reasons for any changes;

(2) A summary of the effectiveness of the pilot program, according to the Director;

(3) An analysis of the total cost of the pilot program, including cost per participant;

(4) A summary of the standards used to determine removal from the BOOT CAMP;

(5) A listing of the offense(s) committed by each participant which led to his or her commitment to the BOOT CAMP;

(6) A listing of the number of participants who completed the BOOT CAMP, and the number of those who did not complete the program, along with a designation as to the reason for removal from the program;

(7) A summary of the effect of the pilot program on the population at other juvenile facilities;

(8) An analysis of the recidivism rate of eligible juvenile offenders who completed the BOOT CAMP and the recidivism rate of non-completers and a comparison sample of juvenile offenders who participated in a sanction other than the BOOT CAMP; and

(9) Any recommendations as to changes to or expansion of the BOOT CAMP. (Jan. 27, 1994, D.C. Law 10-67, § 601, 40 DCR 5768.)

Legislative history of Law 10-67. — See note to § 24-821.

CHAPTER 9. PRISON OVERCROWDING.

Sec.	Sec.
24-901. Definitions.	24-903. Termination of state of emergency.
24-902. Declaration of state of emergency; reduction of minimum and maximum sentences.	24-904. New housing or facilities; rated design capacity.
	24-905. Exception.

§ 24-901. Definitions.

For the purposes of this chapter, the term:

- (1) "Department" means the Department of Corrections established by § 24-441.
- (2) "District" means the District of Columbia.
- (3) "Mayor" means the Mayor of the District of Columbia.
- (4) "Prison" means a correctional facility operated by the Department and includes facilities contracted by the Department.
- (5) "Prison system" means the prisons of the District.
- (6) "Rated design capacity" means the actual available bedspace certified by the Department in the prison system subject to applicable federal and District laws and rules. (Nov. 14, 1987, D.C. Law 7-43, § 2, 34 DCR 5287.)

Legislative history of Law 7-43. — Law 7-43, the "Prison Overcrowding Emergency Powers Act of 1987," was introduced in Council and assigned Bill No. 7-177, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on June 30, 1987 and July 14, 1987, respectively. Signed by the Mayor on July 17, 1987, it was assigned Act No. 7-56 and transmitted to both Houses of Congress for its review.

Chapter did not excuse District's non-compliance with consent decree. — District

government's position that the limitations of this chapter prevented District's compliance with federal consent decree requiring lid on prison facility population did not permit modification of consent decree, as District government had the power to provide whatever enabling legislation was necessary to comply with consent decree. *Twelve John Does v. District of Columbia*, 861 F.2d 295 (D.C. Cir. 1988).

Cited in *United States v. Vaughn*, 117 WLR 441 (Super. Ct. 1989).

§ 24-902. Declaration of state of emergency; reduction of minimum and maximum sentences.

(a) The Department shall request the Mayor to declare a state of emergency in the prisons whenever the population of the prison system exceeds the rated design capacity for 30 consecutive days. In making the request, the Department shall certify the rated design capacity and current population of the prison system and that all administrative actions consistent with applicable District laws and rules have been exhausted in an attempt to reduce the prison population to the rated design capacity.

(b) Except as provided in subsections (d), (e), and (f) of this section, unless the Mayor finds within 15 days of the Department's request that the Department acted in error, the Mayor shall declare a state of emergency in the prison system within that 15-day period, shall reduce by 90 days the minimum sentences of all prisoners who have established minimum prison terms, and shall reduce by 90 days or 10%, whichever is less, the maximum sentences of all eligible prisoners.

(c) If the actions taken pursuant to subsection (b) of this section do not reduce the population of the prison system to 95% of the rated design capacity within 90 days of the date of the declaration of the state of emergency in the prison system, the Mayor shall again reduce by 90 days the minimum sentences of all prisoners who have established minimum prison terms and shall reduce by 90 days or 10%, whichever is less, the maximum sentence of all eligible prisoners.

(d) No prisoner shall receive more than 2 reductions in maximum sentence under a single declaration of a state of emergency in the prison system.

(e) The Mayor shall not reduce the minimum sentence of any person whose remaining minimum sentence is greater than 180 days. The Mayor shall not reduce the maximum sentence of any person whose remaining maximum sentence is greater than 180 days.

(f) The Mayor shall not reduce the sentence of any prisoner who is:

(1) Serving a sentence of life imprisonment;

(2) Serving a sentence for committing a violent felony, including a sentence for homicide, rape, assault with intent to rob, a sex offense other than rape, extortion, kidnapping, assault with a dangerous weapon, or armed robbery; or

(3) Serving a mandatory minimum sentence pursuant to the provisions of the District of Columbia Mandatory-Minimum Sentences Initiative of 1981. (Nov. 14, 1987, D.C. Law 7-43, § 3, 34 DCR 5287.)

Legislative history of Law 7-43. — See note to § 24-901.

References in text. — The “District of Columbia Mandatory-Minimum Sentences Initia-

tive of 1981,” referred to in subsection (f)(3) of this section, is D.C. Law 4-166, which is codified as §§ 22-3202, 33-501 and 33-541.

§ 24-903. Termination of state of emergency.

(a) If at any time during the state of emergency in the prison system, the population of the prison system is reduced to 95% of the rated design capacity, the Department shall certify that fact to the Mayor and request the Mayor to terminate the state of emergency.

(b) Unless the Mayor finds within 15 days of the Department’s request that the Department has acted in error in requesting the termination of the state of emergency in the prison system, the Mayor shall declare the state of emergency in the prison system ended within that 15-day period. (Nov. 14, 1987, D.C. Law 7-43, § 4, 34 DCR 5287.)

Legislative history of Law 7-43. — See note to § 24-901.

§ 24-904. New housing or facilities; rated design capacity.

(a) After November 14, 1987, all new housing or facilities purchased, leased, constructed, or converted by the Department for use as a prison, except as provided in subsection (b) of this section, shall have only single occupancy rooms or cells and shall comply with all applicable federal and District laws and rules.

(b) Multiple occupancy or dormitory-style housing or facilities may be used in minimum security conditions only; provided that the housing or facilities meet all applicable American Correctional Association standards related to multiple occupancy housing.

(c) After July 1, 1987, rated design capacity shall not include trailers, modular units, or bedspace not designed for prison housing. (Nov. 14, 1987, D.C. Law 7-43, § 5, 34 DCR 5287.)

Legislative history of Law 7-43. — See note to § 24-901.

§ 24-905. Exception.

The provisions of this chapter shall not apply whenever the prison population exceeds rated design capacity as the direct result of loss of bedspace due to natural disaster or deliberate destruction of property. (Nov. 14, 1987, D.C. Law 7-43, § 6, 34 DCR 5287.)

Legislative history of Law 7-43. — See note to § 24-901.

CHAPTER 10. INTERSTATE CORRECTIONS COMPACT.

Sec.
24-1001. Interstate Corrections Compact.

Sec.
24-1002. Additional duties of Mayor.

§ 24-1001. Interstate Corrections Compact.

The Mayor is authorized to enter into and execute on behalf of the District of Columbia a compact with any state or states legally joining in the compact in the form substantially as follows:

INTERSTATE CORRECTIONS COMPACT

The contracting states solemnly agree that:

ARTICLE I.

The party states, desiring by common action to fully utilize and improve their institutional facilities and provide adequate programs for the confinement, treatment, and rehabilitation of various types of offenders, declare that it is the policy of each of the party states to provide facilities and programs on a basis of cooperation with one another and with the federal government, thereby serving the best interest of offenders and society, and effecting economies in capital expenditures and operational costs. The purpose of this compact is to provide for the mutual development and execution of programs of cooperation for the confinement, treatment, and rehabilitation of offenders with the most economical use of human and material resources.

ARTICLE II.

As used in this compact, unless the context clearly requires otherwise:

(a) "State" means a state of the United States, the United States of America, a territory or possession of the United States, the District of Columbia, or the Commonwealth of Puerto Rico.

(b) "Sending state" means a state party to this compact in which conviction or court commitment occurred.

(c) "Receiving state" means a state party to this compact to which an inmate is sent for confinement other than a state in which conviction or court commitment occurred.

(d) "Inmate" means a male or female offender who is committed or under sentence to or confined in a penal or correctional institution.

(e) "Institution" means any penal or correctional facility, including, but not limited to, a facility for the mentally ill, in which inmates as defined in subsection (d) of this article may lawfully be confined.

ARTICLE III.

(a) Each party state may make 1 or more contracts with any 1 or more of the other party states or with the federal government for the confinement of

inmates on behalf of a sending state in institutions situated within receiving states. Any such contract shall provide for:

- (1) Its duration;
- (2) Payments to be made to the receiving state or to the federal government, by the sending state for inmate maintenance, extraordinary medical and dental expenses, and any participation in or receipt by inmates of rehabilitative or correctional services, facilities, programs, or treatment not reasonably included as part of normal maintenance;
- (3) Participation in programs of inmate employment, if any, the disposition or crediting of any payment received by inmates on account of employment, and the crediting of proceeds from or disposal of any products resulting employment;
- (4) Delivery and retaking of inmates; and
- (5) Any other matters necessary to fix the obligations, responsibilities, and rights of the sending and receiving states.

(b) The terms and provisions of this compact shall be part of any contract entered into by the authority of or pursuant to the compact, and nothing in the contract shall be inconsistent with the compact.

ARTICLE IV.

(a) Whenever the appropriate officials in a state party to this compact and which has entered into a contract pursuant to Article III shall decide that confinement in or transfer of an inmate to an institution within the territory of another party state is necessary or desirable in order to provide adequate quarters and care or an appropriate program of rehabilitation or treatment, the appropriate officials may direct that the confinement be within an institution within the territory of the other party state, the receiving state to act in that regard solely as agent for the sending state.

(b) The appropriate officials of any state party to this compact shall have access, at all reasonable times, to any institution in which the state has a contractual right to confine inmates for the purpose of inspecting the facilities and visiting the state's inmates confined in the institution.

(c) Inmates confined in an institution pursuant to the terms of this compact shall at all times be subject to the jurisdiction of the sending state and may at any time be removed from the receiving state for transfer to a prison or other institution within the sending state, for transfer to another institution with which the sending state may have a contractual or other right to confine inmates, for release on probation or parole, for discharge, or for any other purpose permitted by the laws of the sending state; provided, that the sending state shall continue to be obligated to payments as may be required pursuant to the terms of any contract entered into under the terms of Article III.

(d) Each receiving state shall provide regular reports to each sending state on the inmates of that sending state in institutions pursuant to this compact, including a conduct record of each inmate, and certify the record to the appropriate official designated by the sending state, in order that each inmate may have official review of his or her record in determining and altering the

disposition of the inmate in accordance with the law which may obtain in the sending state and in order that the record may be a source of information for the sending state.

(e) All inmates confined in an institution pursuant to the provisions of this compact shall be treated in a reasonable and humane manner and shall be treated equally with similar inmates of the receiving state confined in the same institution. The fact of confinement in a receiving state shall not deprive any inmate so confined of any legal rights which the inmate would have had if confined in an appropriate institution of the sending state.

(f) Any hearing to which an inmate confined pursuant to this compact may be entitled by the law of the sending state may be conducted before the appropriate authorities of the sending state, or of the receiving state if authorized by the sending state. The receiving state shall provide adequate facilities for the hearings conducted by the appropriate officials of a sending state. In the event the hearing is conducted before appropriate officials of the receiving state, the governing law shall be that of the sending state, and a record of the hearing as prescribed by the sending state shall be made. The record together with any recommendations of the hearing officials shall be transmitted immediately to the appropriate official before whom the hearing would have been conducted if it had taken place in the sending state. In all proceedings conducted pursuant to the provisions of this subsection, the appropriate officials of the receiving state shall act solely as agents of the sending state, and no final determination shall be made in any matter except by the appropriate officials of the sending state.

(g) Any inmate confined pursuant to this compact shall be released within the territory of the sending state unless the inmate and the sending and receiving states agree upon release in some other place. The sending state shall bear the cost of the return to its territory.

(h) Any inmate confined pursuant to the terms of this compact shall have all rights to participate in and derive any benefits or incur or be relieved of any obligations or have the obligations modified or a change in status on account of any action or proceeding in which he or she could have participated if confined in any appropriate institution of the sending state located within the sending state.

(i) A parent, guardian, trustee, or other person entitled under the laws of the sending state to act for, advise, or otherwise function with respect to any inmate shall not be deprived of or be restricted in the exercise of any power in respect of any inmate confined pursuant to the terms of this compact.

ARTICLE V.

(a) Any decision of the sending state in respect of any matter over which it retains jurisdiction pursuant to this compact shall be conclusive upon and not reviewable within the receiving state, but if at the time the sending state seeks to remove an inmate from an institution in the receiving state there is pending against the inmate within the receiving state any criminal charge or if the inmate is formally accused of having committed within the receiving state a

criminal offense, the inmate shall not be returned without the consent of the receiving state until discharge from prosecution or other form of proceeding, imprisonment, or detention for the offense. The appropriate officials of the sending state shall be permitted to transport inmates pursuant to this compact through all states party to this compact without interference.

(b) An inmate who escapes from an institution in which he is confined pursuant to this compact shall be a fugitive from the sending state and from the receiving state. In the case of an escape to a jurisdiction other than the sending or receiving state, the responsibility for institution of extradition or rendition proceedings shall be that of the sending state, but nothing contained in this compact shall be construed to prevent or affect the activities of officers and agencies of any jurisdiction directed toward the apprehension and return of an escapee.

ARTICLE VI.

Any state party to this compact may accept federal aid for use in connection with any institution or program, the use of which is or may be affected by this compact or any compact pursuant to this act, and any inmate in a receiving state pursuant to this compact may participate in any federally-aided program or activity for which the sending and receiving states have made contractual provision, provided that if the program or activity is not part of the customary correctional regimen, the express consent of the appropriate official of the sending state shall be required for participation in the federally-aided program.

ARTICLE VII.

This compact shall become effective and binding upon the states so acting when it has been enacted into law by any two states. Thereafter, this compact shall become effective and binding as to any other of the states upon similar action by the state.

ARTICLE VIII.

This compact shall continue in effect and remain binding upon a party state until the party state enacts a statute repealing the compact and providing for the sending of formal written notice of withdrawal from the compact to the appropriate official of all other party states. An actual withdrawal shall not take effect until 1 year after the notice provided in the statute has been sent. The withdrawal shall not relieve the withdrawing state from its obligations assumed under the compact prior to the effective date of withdrawal. Before the effective date of withdrawal, a withdrawing state shall remove to its territory, at its own expense, all inmates of the withdrawing state confined pursuant to the provisions of this compact.

ARTICLE IX.

Nothing contained in this compact shall be construed to abrogate or impair any agreement or other arrangement which a party state may have with a

nonparty state for the confinement, rehabilitation, or treatment of inmates nor to repeal any other laws of a party state authorizing the making of cooperative institutional arrangements.

ARTICLE X.

The provisions of this compact shall be liberally construed and shall be severable. If any phrase, clause, sentence, or provision of this compact is declared to be contrary to the constitution of any participating state or of the United States or the applicability of the compact to any government, agency, person, or circumstance is held invalid, the validity of the remainder of this compact and the applicability of the compact to any government, agency, person, or circumstance shall not be affected by the compact. If this compact shall be held contrary to the constitution of any state participating in the compact, the compact shall remain in full force and effect as to the remaining states and in full force and effect as to the state affected as to all severable matters. (May 10, 1989, D.C. Law 7-230, § 2, 35 DCR 7736; May 8, 1990, D.C. Law 8-122, § 2, 37 DCR 30.)

Legislative history of Law 7-230. — Law 7-230, the “Authorization to Enter an Interstate Corrections Compact Temporary Act of 1988,” was introduced in Council and assigned Bill No. 7-542. The Bill was adopted on first and second readings on July 12, 1988, and September 27, 1988, respectively. Signed by the Mayor on October 13, 1988, it was assigned Act No. 7-242 and transmitted to both Houses of Congress for its review. Law 7-230 became effective May 10, 1989.

Legislative history of Law 8-122. — Law 8-122, the “Authorization to Enter the Interstate Corrections Compact Act of 1989,” was introduced in Council and assigned Bill No.

8-247, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on November 21, 1989, and December 5, 1989, respectively. Signed by the Mayor on December 21, 1989, it was assigned Act No. 8-131 and transmitted to both Houses of Congress for its review.

References in text. — “This act,” referred to in Article VI of the compact, is D.C. Law 8-122.

Delegation of Authority Under D.C. Act 7-242, “Authorization to Enter an Interstate Corrections Compact Temporary Act of 1988.” — See Mayor’s Order 89-49, March 9, 1989.

§ 24-1002. Additional duties of Mayor.

The Mayor shall do all things necessary and incidental to the execution of the compact. (May 10, 1989, D.C. Law 7-230, § 3, 35 DCR 7736; May 8, 1990, D.C. Law 8-122, § 3, 37 DCR 30.)

Legislative history of Law 7-230. — See note to § 24-1001.

Legislative history of Law 8-122. — See note to § 24-1001.

Delegation of Authority Under D.C. Act

7-242, “Authorization to Enter an Interstate Corrections Compact Temporary Act of 1988.” — See Mayor’s Order 89-49, March 9, 1989.

PART V.

GENERAL STATUTES.

- TITLE 25. ALCOHOLIC BEVERAGES.
- TITLE 26. BANKS AND OTHER FINANCIAL INSTITUTIONS.
- TITLE 27. CEMETERIES AND CREMATORIES.
- TITLE 28. COMMERCIAL INSTRUMENTS AND TRANSACTIONS.
- TITLE 29. CORPORATIONS.
- TITLE 30. DOMESTIC RELATIONS.
- TITLE 31. EDUCATION AND CULTURAL INSTITUTIONS.
- TITLE 32. ELEEMOSYNARY, CURATIVE, CORRECTIONAL, AND PENAL INSTITUTIONS.
- TITLE 33. FOOD AND DRUGS.
- TITLE 34. HOTELS AND LODGING HOUSES.
- TITLE 35. INSURANCE.
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- TITLE 40. MOTOR VEHICLES AND TRAFFIC.
- TITLE 41. PARTNERSHIPS.
- TITLE 42. PERSONAL PROPERTY.
- TITLE 43. PUBLIC UTILITIES.
- TITLE 44. RAILROADS AND OTHER CARRIERS.
- TITLE 45. REAL PROPERTY.
- TITLE 46. SOCIAL SECURITY.
- TITLE 47. TAXATION AND FISCAL AFFAIRS.
- TITLE 48. TRADE PRACTICES.
- TITLE 49. COMPILATION AND CONSTRUCTION OF CODE.

TITLE 25. ALCOHOLIC BEVERAGES.

Chapter

1. Alcoholic Beverage Control..... §§ 25-101 to 25-148.

CHAPTER 1. ALCOHOLIC BEVERAGE CONTROL.

- | Sec. | Sec. |
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| 25-101. Partial repeal of National Prohibition Act. | prohibited; consumption on licensed premises prohibited. |
| 25-102. Short title; application of chapter. | 25-122. Forfeiture of license upon licensee becoming bail. |
| 25-103. Definitions. | 25-123. Monthly reports of beverages manufactured or purchased. |
| 25-104. Alcoholic Beverage Control Board — Appointment; qualifications; term of office; vacancies; Chairman; employees; expenses. | 25-124. Beverage taxes; amount; collection; exemptions; reports. |
| 25-105. Same — Conflict of interest. | 25-125. Sale or distribution of beverages by minor prohibited. |
| 25-106. Same — Powers and duties. | 25-126. [Repealed]. |
| 25-107. Council authorized to make rules and regulations. | 25-127. Operation of locomotive, streetcar, elevator, watercraft, or horse-drawn vehicle by intoxicated person prohibited. |
| 25-108. Alcohol used for nonbeverage purposes. | 25-128. Drinking of alcoholic beverage in public place prohibited; intoxication prohibited. |
| 25-109. Manufacture or sale of alcoholic beverage without license prohibited; exception. | 25-129. Search warrants for illegal alcoholic beverages; obstructing or resisting officer; disposition of seized beverages. |
| 25-110. Licenses — Issuance authorized; records. | 25-130. Purchase, possession or consumption by persons under 21; misrepresentation of age; penalties. |
| 25-111. Same — Classifications; fees. | 25-130.1. Delivery, offer, or otherwise making available to persons under 21; penalties. |
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| 25-113. Licenses — Holding of more than 1 class; “interest” defined; certain licenses held or pending on June 22, 1982. | 25-132. Penalty for violation where no specific penalty provided; additional penalty for failure to perform certain required acts; prosecutions. |
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| 25-115. Same — Application; qualifications; denial; exemptions. | 25-134. Containers to be labeled. |
| 25-115.1. Same — Influencing application process; penalty. | 25-135. Offenses, rights, penalties, or seizures under National Prohibition Act. |
| 25-116. Same — Issuance in certain districts restricted. | 25-136. Severability. |
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| 25-118. Same — Revocation or suspension; offer in compromise of suspension; causes; hearing; posting of notice. | 25-138. Tax on beer. |
| 25-119. Same — Revocation where manufacturer has substantial interest; furnishing of money or equipment by manufacturer restricted; extension of credit permitted; “manufacturer” defined. | 25-139. Place of violation of chapter declared nuisance; injunction and abatement. |
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Sec.	Sec.
25-142. Refund of tax erroneously or illegally collected.	25-145. Regulations.
25-143. Judicial review of tax determination or denial of refund claim.	25-146. Severability; existing rights and liabilities; prior offenses.
25-144. Seizure and forfeiture of contraband alcoholic beverages and vehicles; vehicles excepted from forfeiture; disposition of seized property.	25-147. Warning signs regarding dangers of alcohol consumption during pregnancy.
	25-148. Keg registration.

§ 25-101. Partial repeal of National Prohibition Act.

The National Prohibition Act, as amended and supplemented, insofar as it affects the manufacture, sale, and possession in the District of Columbia, and the transportation in, into, and from the District of Columbia, of alcoholic beverages, is hereby repealed, with the exception of Title III, and § 4 of Title II insofar as it affects denatured alcohol. (Jan. 24, 1934, 48 Stat. 319, ch. 4, § 1; 1973 Ed., § 25-101.)

Cross references. — As to previous violation or seizures under National Prohibition Act not affected, see § 25-135.

References in text. — The National Prohibition Act, referred to at the beginning of the section, is the Act of October 28, 1919, 41 Stat. 305, ch. 85.

This chapter did not repeal the Liquor Taxing Act of 1934. *Sims v. Rives*, 84 F.2d 871 (D.C. Cir.), cert. denied, 298 U.S. 682, 56 S. Ct. 960, 80 L. Ed. 1402 (1936), overruled on other

grounds, *Neild v. District of Columbia*, 110 F.2d 246 (D.C. Cir. 1940).

Cited in *Le Jimmy, Inc. v. District of Columbia ABC Bd.*, App. D.C., 433 A.2d 1090 (1981); *Fateh v. Rich*, App. D.C., 481 A.2d 464 (1984); *Lyles v. Executive Club Ltd.*, 670 F. Supp. 34 (D.D.C. 1987); *Rong Yao Zhou v. Jennifer Mall Restaurant, Inc.*, App. D.C., 534 A.2d 1268 (1987); *District of Columbia v. Morrissey*, App. D.C., 668 A.2d 792 (1995).

§ 25-102. Short title; application of chapter.

This chapter may be cited as the “District of Columbia Alcoholic Beverage Control Act.” It shall apply only to the District of Columbia and shall not authorize the delivery of alcoholic beverages outside of the District of Columbia in violation of the law of the place of delivery. (Jan. 24, 1934, 48 Stat. 319, ch. 4, § 2; 1973 Ed., § 25-102.)

Cross references. — As to application and exemptions from chapter, see §§ 25-108, 25-109, 25-115, and 25-137.

§ 25-103. Definitions.

In the interpretation of this chapter, unless the context indicates a different meaning:

(1) The word “alcohol” means ethyl alcohol, hydrated oxide of ethyl, or spirit of wine, from whatever source or by whatever processes produced.

(2) The word “spirits” means any beverage which contains alcohol obtained by distillation mixed with drinkable water and other substances in solution, including brandy, rum, whisky, cordials, and gin.

(3) The word “wine” means the product of the normal alcoholic fermentation of the juice of fresh, sound, ripe grapes, with the usual cellar treatment

and necessary additions to correct defects due to climatic, saccharine, and seasonal conditions, including champagne, sparkling, artificially carbonated and fortified wine. No other product obtained by the fermentation of the natural sugar contents of fruits or other agricultural products containing sugar shall be called "wine" unless designated by appropriate prefix descriptions of the fruit or other product from which the same was predominantly produced, or as artificial or imitation wine. Light wines shall mean wines containing 14% or less of alcohol by volume.

(4) The word "beer" means any fermented beverages of any name or description manufactured from malt, wholly or in part, or from any substitute therefor.

(5) The words "alcoholic beverage" or "beverage" include the 4 varieties of liquor above defined (alcohol, spirits, wine, and beer) and every liquid or solid, patented or not, containing alcohol, spirits, wine, or beer and capable of being consumed by a human being. Any liquid or solid containing more than 1 of the 4 varieties above defined is considered as belonging to that variety which has the higher percentage of alcohol, according to the order in which they are above defined, except as provided in paragraph (3) of this section. The provisions of this section and of this chapter shall not apply to any liquid or solid containing less than one-half of 1% of alcohol by volume, nor shall anything contained in this chapter be construed as affecting the manufacture of apple cider or the sale thereof.

(6) The word "Board" shall mean the Alcoholic Beverage Control Board created by this chapter.

(7) The word "club" means a corporation for the promotion of some common object (not including corporations organized for any commercial or business purpose, the object of which is money profit), owning, hiring, or leasing a building or space in a building of such extent and character as in the judgment of the Board may be suitable and adequate for the reasonable and comfortable use and accommodations of its members and their guests, and including such space outside of the building and adjoining it as may be approved by the Board, and provided with such suitable and adequate kitchen and dining room space and equipment, implements, and facilities, and employing such a sufficient number of employees for cooking, preparing, and serving meals for its members and their guests, as shall satisfy the Board that the sale of beverages intended is not more than an incident to and is not the prime source of revenue from such space; and the affairs and management of such corporation are conducted by a board of directors, executive committee, or similar body chosen by the members at least once each calendar year and no officer, agent, or employee of the club is paid directly or indirectly, or receives in the form of salary or other compensation, any profit from the disposition or sale of beverages to the club or to the members of the club or guests introduced by members beyond the amount of such salary as may be fixed and voted by the members, or by its directors, or other governing body.

(8) The word "Council of the District of Columbia" shall mean the Council of the District of Columbia.

(9) The word "District" shall mean the District of Columbia.

(10) The word “hotel” means a suitable building or other structure, approved by the Board, including such suitable space outside of the building and adjoining it as may be approved by the Board, kept, used, maintained, advertised, or held out to the public to be a place where food is served and sleeping accommodations offered for pay to transient guests; in which 30 or more rooms are used for the sleeping accommodations of such transient guests, and having 1 or more dining rooms where food is served to such transient guests, such sleeping accommodations and dining rooms being conducted in the same building or in connecting buildings, and such building or buildings, structure or structures being provided with such adequate kitchen and dining room equipment and capacity and having employed therein such number and kinds of employees for preparing, cooking, and serving food for its guests as shall satisfy the Board that such dining room is intended for use primarily as a place for preparing, cooking, and serving food, and that the sale of food accounts for at least 45% of gross annual receipts from the operation of the dining room. In the case of a hotel that has 200 or fewer rooms and that was built before 1940, the sale of food shall account for at least 25% of gross annual receipts from the operation of the dining room. No such dining room shall be considered suitable if any business is conducted therein other than the preparation, cooking, and serving of food, except such a business as is incidental to a bona fide dining room.

(10a) The word “food” means any substance consumed by human beings except alcoholic beverages and any nonalcoholic liquid or solid substance served as part of the contents of an alcoholic beverage drink.

(11) The word “manufacture” shall include rectification.

(12) Repealed.

(13) The word “person” includes an individual, partnership, corporation, and association.

(14) The word “restaurant” means a suitable space in a suitable building, approved by the Board, including such suitable space outside of the building and adjoining it as may be approved by the Board, kept, used, maintained, advertised, or held out to the public to be a place where food is served, such space being provided with such adequate kitchen and dining room equipment and capacity, and having employed therein such number and kinds of employees for preparing, cooking, and serving food for its guests as shall satisfy the Board that such space is intended for use primarily as a place for preparing, cooking, and serving food, and that the sale of food accounts for at least 45% of gross annual receipts of the place. No such space shall be considered suitable if any business is conducted therein other than the preparation, cooking, and serving of food, except such a business as is incidental to a bona fide restaurant.

(15) The word “sell” or “sale” shall include offering for sale, keeping for sale, trafficking in, bartering, delivering for value, exchanging for goods, or in any way other than purely gratuitously, and every delivery of any alcoholic beverage made otherwise than by purely gratuitous title shall constitute a sale.

(16) The word “table” shall not include a counter, bar, or similar contrivance.

(17) The word “tavern” means a suitable space in a suitable building approved by the Board, including suitable space outside of the building and adjoining it, as may be approved by the Board, kept, used, maintained, advertised, or held out to the public to be a place where food and alcoholic beverages are served. A tavern shall not be a place that provides facilities for dancing for its employees or entertainers.

(18) The words “legitimate theater” mean premises in which the principal business shall be the operation of live theatrical, operatic, or dance performances, or such other lawful adult entertainment or recreational facilities as the Alcoholic Beverage Control Board, giving due regard to the convenience of the public and the strict avoidance of sales prohibited by this chapter, shall by regulation classify for eligibility. The words shall not include a motion picture theater.

(19) The words “credit card” mean consumer credit extended on a nationally recognized account pursuant to a plan under which:

(A) The creditor may permit the customer to make purchases or obtain loans, from time to time, indirectly by the use of a credit card, check, or other device as the plan may provide;

(B) The customer has the privilege of paying the balance in full or in installments; and

(C) A finance charge may be computed by the creditor from time to time on an outstanding unpaid balance.

(20) The word “adult” means any person 21 years of age or older.

(21) The words “the Washington Convention Center” mean the Washington Convention Center and the Convention Center Board of Directors, as established by § 9-602(a).

(22) The words “gross annual receipts” mean the total amount of money received during the most recent 1-year accounting period for the sale of food and alcoholic beverages, not including the amount received for taxes and gratuities in conjunction with these sales, or charges for entertainment or other services.

(23) The word “nightclub” means a suitable space in a suitable building, approved by the Board, including suitable space outside of the building and adjoining it as may be approved by the Board, kept, used, maintained, advertised, or held out to the public to be a place that serves food and alcoholic beverages and provides music and facilities for dancing.

(24) The phrase “1986 act” means the District of Columbia Alcoholic Beverage Control Act Reform Amendment Act of 1986.

(25)(A) Except as provided in subparagraph (B) of this paragraph, nothing in the definitions in this section shall be construed as prohibiting or restricting a restaurant from offering entertainment or facilities for dancing, or preventing or restricting a tavern from offering entertainment, or preventing or restricting a nightclub from offering food. A licensee who offers food, entertainment, or facilities for dancing may advertise the food, entertainment, or facilities for dancing that are offered, regardless of the kind of license held.

(B) No licensed establishment other than a nightclub or a legitimate theater may provide entertainment by nude performers.

(26) The words “brew pub” mean a suitable place, approved by the Board for the manufacture of beer to be sold for consumption only at the place of manufacture. A brew pub license shall only be approved for a place, located in the brew-pub zone, that holds a retailer’s license, class C/R, C/T, D/R, or D/T.

(27) The words “brew-pub zone” mean the area defined in Section 199 of the Alcoholic Beverage Control Regulations (23 DCMR 199).

(28) The word “keg” means any container capable of holding 4 gallons or more of beer, wine, or spirits, and which is designed to dispense beer, wine, or spirits directly from the container. (Jan. 24, 1934, 48 Stat. 319, ch. 4, § 3; Aug. 27, 1935, 49 Stat. 897, ch. 756, § 1; Dec. 8, 1970, 84 Stat. 1393, Pub. L. 91-535, § 1; 1973 Ed., § 25-103; Apr. 18, 1978, D.C. Law 2-73, § 3, 24 DCR 7066; Sept. 29, 1982, D.C. Law 4-157, §§ 2, 15, 29 DCR 3617; Mar. 10, 1983, D.C. Law 4-204, § 2, 30 DCR 185; Aug. 2, 1983, D.C. Law 5-16, § 2, 30 DCR 3193; May 23, 1986, D.C. Law 6-119, § 2, 33 DCR 2447; Mar. 7, 1987, D.C. Law 6-217, § 2, 34 DCR 907; Aug. 17, 1991, D.C. Law 9-40, § 2(a), 38 DCR 4974; Oct. 3, 1992, D.C. Law 9-174, § 2(a), 39 DCR 5859; Sept. 11, 1993, D.C. Law 10-12, § 2(a), 40 DCR 4020; May 24, 1994, D.C. Law 10-122, § 2(a), 41 DCR 1658.)

Cross references. — As to licensee defined, see § 25-113.

As to manufacturer defined, see § 25-119.

As to wholesaler defined, see § 25-120.

Section references. — This section is referred to in §§ 6-912, 6-918, 25-133, 28-6-102, and 33-511.

Effect of amendments. — D.C. Law 10-122 added (28).

Emergency act amendments. — For temporary amendment of section, see § 2(a) of the Underage Drinking Emergency Amendment Act of 1994 (D.C. Act 10-236, April 28, 1994, 41 DCR 2601).

Legislative history of Law 2-73. — Law 2-73, the “Third Amendment to the Revenue Act for Fiscal Year 1978 and Other Purposes,” was introduced in Council and assigned Bill No. 2-206, which was referred to the Committee on Finance and Revenue. The Bill was adopted on first, amended first, and second readings on November 22, 1977, December 6, 1977 and January 10, 1978, respectively. Signed by the Mayor on February 9, 1978, it was assigned Act No. 2-149 and transmitted to both Houses of Congress for its review.

Legislative history of Law 4-157. — Law 4-157, the “Alcoholic Beverage Control Amendments Act of 1982,” was introduced in Council and assigned Bill No. 4-218, which was referred to the Committee on Public Services and Consumer Affairs. The Bill was adopted on first and second readings on June 8, 1982, and July 6, 1982, respectively. Signed by the Mayor on July 29, 1982, it was assigned Act No. 4-231 and transmitted to both Houses of Congress for its review.

Legislative history of Law 4-204. — Law 4-204, the “Alcoholic Beverage Control Amend-

ments Temporary Act of 1982,” was introduced in Council and assigned Bill No. 4-534, which was referred to the Committee on Public Services and Consumer Affairs. The Bill was adopted on first and second readings on November 16, 1982, and December 14, 1982, respectively. Signed by the Mayor on December 28, 1982, it was assigned Act No. 4-288 and transmitted to both Houses of Congress for its review.

Legislative history of Law 5-16. — Law 5-16, the “District of Columbia Election Code of 1955 and Related Election Practices Amendments Act of 1983,” was introduced in Council and assigned Bill No. 5-52, which was referred to the Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and second readings on May 10, 1983, and May 24, 1983, respectively. Signed by the Mayor on June 9, 1983, it was assigned Act No. 5-33 and transmitted to both Houses of Congress for its review.

Legislative history of Law 6-119. — Law 6-119, the “Alcoholic Beverage Control Act Temporary Amendment Act of 1986,” was introduced in Council and assigned Bill No. 6-392, which was retained by Council. The Bill was adopted on first and second readings on March 11, 1986 and March 25, 1986, respectively. Signed by the Mayor on April 8, 1986, it was assigned Act No. 6-154 and transmitted to both Houses of Congress for its review.

Legislative history of Law 6-217. — Law 6-217, the “District of Columbia Alcoholic Beverage Control Act Reform Amendment Act of 1986,” was introduced in Council and assigned Bill No. 6-504, which was referred to the Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and second read-

ings on November 25, 1986 and December 16, 1986, respectively. Signed by the Mayor on January 15, 1987, it was assigned Act No. 6-277 and transmitted to both Houses of Congress for its review.

Legislative history of Law 9-40. — Law 9-40, the “District of Columbia Alcoholic Beverage Control Act Brew Pub License Amendment Act of 1991,” was introduced in Council and assigned Bill No. 9-68, which was referred to the Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and second readings on June 4, 1991, and July 2, 1991, respectively. Signed by the Mayor on July 24, 1991, it was assigned Act No. 9-77 and transmitted to both Houses of Congress for its review.

Legislative history of Law 9-174. — See note to § 25-115.1.

Legislative history of Law 10-12. — See note to § 25-148.

Legislative history of Law 10-122. — See note to § 25-130.1.

References in text. — The “District of Columbia Alcoholic Beverage Control Act Reform Amendment Act of 1986,” referred to in paragraph (24), is D.C. Law 6-217.

Regulations for hotel within licensing authority. — Regulations requiring that a building must have at least 30 bedrooms in order to be licensed as a hotel is within the licensing authority of the Council of the District of Columbia. *Courembis v. District of Columbia*, 193 F.2d 18 (D.C. Cir. 1951).

Unauthorized beer tax regulations. — Regulations of the Council taxing beer in warehouses before it was sold were not authorized. *American Sales Co. v. District of Columbia*, 292 F.2d 751 (D.C. Cir. 1961).

“Barroom” defined. — A barroom is a place in which intoxicating liquors are sold to be drunk on the premises. *Army & Navy Club v. District of Columbia*, 8 App. D.C. 544 (1896).

Finding required for renewal of restaurant’s license. — Before the Board can rule

that it may renew a Class C liquor license for a restaurant, the Board must make a finding that the restaurant’s chief source of revenue is from the sale of meals and not beverages. *Upper Ga. Ave. Planning Comm. v. ABC Bd.*, App. D.C., 500 A.2d 987 (1985).

Press club not “club” under paragraph (7). — Board properly denied a class C liquor license to a press club because it did not qualify as a “club” for purposes of paragraph (7) of this section where it was not equipped and did not plan to prepare any food on the premises for which a license was sought but food was to be catered or delivered. *Washington Press Club v. District of Columbia ABC Bd.*, App. D.C., 476 A.2d 1107 (1984).

Sale at club does not constitute violation. — Where use of an art gallery by club patrons might indirectly lead to artwork sales, the connection between those potential profits and the sale of alcoholic beverages by the club is too tenuous to constitute a violation of paragraph (7) of this section. *Citizens Ass’n v. District of Columbia ABC Bd.*, App. D.C., 410 A.2d 195 (1979).

Congressional directive to consider neighborhood. — Congress recognized that the operation of liquor establishments would trouble neighbors when it directed the Board to consider the wishes of those persons in issuing liquor licenses. *Citizens Ass’n v. Simonson*, 403 F.2d 175 (D.C. Cir. 1968), cert. denied, 394 U.S. 975, 89 S. Ct. 1454, 22 L. Ed. 2d 755 (1969).

Courts may take judicial notice of the alcoholic content of whiskey from officers’ experience in tasting and smelling liquor, and from their conclusion that they tasted liquid and that it contained whiskey. *Stagecrafters’ Club, Inc. v. District of Columbia*, App. D.C., 89 A.2d 876 (1952).

Cited in *D.T. Corp. v. District of Columbia ABC Bd.*, App. D.C., 407 A.2d 707 (1979); *Rong Yao Zhou v. Jennifer Mall Restaurant, Inc.*, App. D.C., 534 A.2d 1268 (1987).

§ 25-104. Alcoholic Beverage Control Board — Appointment; qualifications; term of office; vacancies; Chairman; employees; expenses.

(a) The Mayor, with the advice and consent of the Council, shall appoint an Alcoholic Beverage Control Board to be composed of 7 persons. Each member shall be a resident of the District for at least 3 years immediately preceding his or her appointment and during that period have claimed residence nowhere else. No member of the Board shall hold any other full-time employment with the District government during his or her term of service on the Board. Each member shall have a demonstrated record of substantial involvement in issues related to the community impact of ABC establishments prior to his or her appointment to the Board. The Mayor, with the advice and consent of the

Council, shall appoint 1 member of the Alcoholic Beverage Control Board as chairperson. The chairperson shall have a demonstrated knowledge of the laws and rules and regulations relating to the sale and delivery of alcoholic beverages in the District of Columbia. Members may be reappointed. The Board shall meet in panels of 3 members for the purpose of hearing cases. Notwithstanding any other provision of law, members serving unexpired terms on May 24, 1994, may continue to serve until the members of the new Board are confirmed. Of the 7 persons first appointed as members of the Board, 2 shall be appointed for 2 years, 3 for 3 years, and 2 for 4 years, and thereafter all appointments shall be for a term of 4 years, except appointments made for the remainder of unexpired terms. Vacancies caused by death, resignation, or otherwise shall be filled by the Mayor, with the advice and consent of the Council.

(b)(1) The Mayor of the District of Columbia shall appoint an Assistant Corporation Counsel as a permanent full-time staff counsel to the Alcoholic Beverage Control Division of the Department of Consumer and Regulatory Affairs, established by Reorganization Plan No. 1 of 1983, who shall be an attorney admitted to the practice of law in the District of Columbia and who shall advise the Alcoholic Beverage Control Division regarding all legal matters. The Mayor shall make this appointment within 90 days of September 26, 1984.

(2) The Mayor of the District of Columbia shall detail to the Alcoholic Beverage Control Division additional attorneys from the Corporation Counsel's office as needed.

(c) The Mayor of the District of Columbia may employ personal services necessary to carry out the provisions of this chapter, and may provide for the expenses of the Board. (Jan. 24, 1934, 48 Stat. 321, ch. 4, § 4; Apr. 20, 1948, 62 Stat. 176, ch. 217, § 2; Oct. 28, 1949, 63 Stat. 972, ch. 782, title XI, § 1106(a); 1973 Ed., § 25-104; Mar. 3, 1979, D.C. Law 2-139, § 3205(h), 25 DCR 5740; Sept. 29, 1982, D.C. Law 4-157, § 15, 29 DCR 3617; Mar. 8, 1984, D.C. Law 5-51, § 2(b)(1), 30 DCR 5927; Sept. 26, 1984, D.C. Law 5-119, § 2, 31 DCR 4040; Mar. 14, 1985, D.C. Law 5-159, § 25(a), 32 DCR 30; May 24, 1994, D.C. Law 10-122, § 2(b), 41 DCR 1658.)

Cross references. — As to effective date of D.C. Law 2-139, see § 1-637.1.

Section references. — This section is referred to in §§ 1-637.1 and 1-1462.

Effect of amendments. — D.C. Law 10-122 rewrote (a).

Legislative history of Law 2-139. — Law 2-139, the "District of Columbia Government Comprehensive Merit Personnel Act of 1978," was introduced in Council and assigned Bill No. 2-10, which was referred to the Committee on Government Operations. The Bill was adopted on first and second readings on October 17, 1978 and October 31, 1978, respectively. Signed by the Mayor on November 22, 1978, it was assigned Act No. 2-300 and transmitted to both Houses of Congress for its review.

Legislative history of Law 4-157. — See note to § 25-103.

Legislative history of Law 5-51. — Law 5-51, the "Alcoholic Beverage Control Act Amendments Act of 1983," was introduced in Council and assigned Bill No. 5-248, which was referred to the Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and second readings on October 4, 1983, and October 18, 1983, respectively. Signed by the Mayor on November 9, 1983, it was assigned Act No. 5-77 and transmitted to both Houses of Congress for its review.

Legislative history of Law 5-119. — Law 5-119, the "Alcoholic Beverage Control Act Amendments Act of 1984," was introduced in Council and assigned Bill No. 5-298, which was referred to the Committee on Consumer and

Regulatory Affairs. The Bill was adopted on first and second readings on June 26, 1984, and July 10, 1984, respectively. Signed by the Mayor on July 13, 1984, it was assigned Act No. 5-171 and transmitted to both Houses of Congress for its review.

Legislative history of Law 5-159. — Law 5-159, the “End of Session Technical Amendments Act of 1984,” was introduced in Council and assigned Bill No. 5-540, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on November 20, 1984, and December 4, 1984, respectively. Signed by the Mayor on December 10, 1984, it was assigned Act No. 5-224 and transmitted to both Houses of Congress for its review.

Legislative history of Law 10-122. — See note to § 25-130.1.

Authority under Alcoholic Beverage Control Act Amendment Act of 1983 delegated. — See Mayor’s Order 84-208, November 23, 1984.

History of Alcoholic Beverage Control Board. — Reorganization Order No. 35 of the Board of Commissioners, dated June 16, 1953, established, under the direction and control of a Commissioner, an Alcoholic Beverage Control Board consisting of 3 members appointed by the Board of Commissioners. The Order provided that all powers and authorities authorized by statute or by the Board of Commissioners to be exercised by the previously existing Alcoholic Beverage Control Board would thereafter be vested in the new Alcoholic Beverage Control Board, and the members of the previous board were reappointed to the new Board.

The Order abolished the previously existing Alcoholic Beverage Control Board. This Order was issued pursuant to 1952 Reorganization Order No. 5. The executive functions of the Board of Commissioners were transferred to the Commissioner of the District of Columbia by § 401 of Reorganization Plan No. 3 of 1967. Commissioner’s Order No. 72-206, dated August 8, 1972, abolished the existing Alcoholic Beverage Control Board and rescinded Reorganization Order No. 35. The Order established, in the Department of Economic Development, under the direction and control of the Commissioner, a new Alcoholic Beverage Control Board, consisting of 3 members appointed by the Commissioner, and prescribed the purpose, functions, powers, and duties of the Board and related matters. Mayor’s Order 78-42, dated February 17, 1978, replaced the Department of Economic Development with the Department of Licenses, Investigation, and Inspections. Reorganization Plan No. 1 of 1983 replaced the Department of Licenses, Investigations, and Inspections with the Department of Consumer and Regulatory Affairs.

Issue of discrimination resolved by summary judgment. — Where no genuine issue of material fact existed as to whether the Board discriminated against a liquor licensee, a suit to enjoin the Board from putting such a decision into effect was properly resolved by the summary judgment procedure. *Minkoff v. Payne*, 210 F.2d 689 (D.C. Cir. 1953).

Cited in *Superior Beverages, Inc. v. District of Columbia ABC Bd.*, App. D.C., 567 A.2d 1319 (1989).

§ 25-105. Same — Conflict of interest.

No member or employee of the Board, directly or indirectly, individually, or as a member of a partnership or association, or stockholder in a corporation shall have any interest whatsoever in dealing in, manufacturing, transporting, or storing alcoholic beverages, nor receive any commission or profit whatsoever from any person authorized by virtue of this chapter to manufacture or sell alcoholic beverages. No provision of this section, however, shall prevent any such member or such employee from purchasing, transporting, and keeping in his possession any alcoholic beverage for the personal use of himself or members of his family or guests. (Jan. 24, 1934, 48 Stat. 322, ch. 4, § 5; 1973 Ed., § 25-105.)

Cross references. — As to forbidden business interests, see §§ 25-113, 25-115, 25-119, and 25-120.

History of Alcoholic Beverage Control Board. — See note to § 25-104.

§ 25-106. Same — Powers and duties.

(a) The Board shall administer and enforce the provisions of this chapter, and rules issued pursuant to this chapter, related to the importation, distribution, and sale of alcoholic beverages in the District.

(b) In carrying out its responsibilities, the Board shall:

(1) Receive and evaluate applications for licenses, transfer of licenses, and renewal of licenses authorized by this chapter;

(2) Issue, transfer, and renew licenses to qualified applicants;

(3) Regularly conduct inspections of the premises, books, and records of all licensees during day and evening hours and, on a reasonable number of occasions without prior notification to the licensee or his employees, for compliance with the requirements of this chapter and rules issued pursuant to this chapter;

(4) Establish procedures to receive and timely respond to complaints from any person alleging a violation of any provision of this chapter or rules issued pursuant to this chapter;

(5) Conduct investigations, on its own initiative or on the basis of valid complaints, to identify violations of this chapter or rules issued pursuant to this chapter;

(6) Suspend or revoke licenses, accept an offer of compromise instead of suspension, and impose civil fines as authorized by this chapter and rules issued pursuant to this chapter;

(7) Refer evidence of criminal misconduct to the Corporation Counsel or the United States Attorney for the District of Columbia for investigation and prosecution; and

(8) Keep complete and accurate records of all licensure actions, and maintain these records in a manner readily accessible for inspection by the public during normal business hours.

(c)(1) The Board shall conduct hearings on any matter properly within its jurisdiction in accordance with § 1-1509.

(2) The Board, in the course of conducting hearings, may administer oaths, examine witnesses, and issue subpoenas to compel the attendance and testimony of witnesses and the production of books, records, and other documents as the Board may consider necessary in carrying out its duties. In the case of contumacy or refusal to obey a subpoena, the Superior Court of the District of Columbia, upon written request by the Board, shall issue an order requiring the contumacious person to appear and testify before the Board, or to produce evidence if so ordered. Any person who fails to obey an order of the Superior Court of the District of Columbia shall be subject to punishment for contempt.

(3) Subpoenas issued by the Board may be served:

(A) By an officer of the Metropolitan Police Department;

(B) By a special process server, at least 18 years of age, designated by the Board from among the staff appointed by the Board who are not directly involved in the investigation; and

(C) By a special process server, at least 18 years of age, engaged by the Board for this purpose.

(4) Witnesses, other than those employed by the District or by the United States, shall be entitled to the same fees as are paid witnesses for attendance before the Superior Court of the District of Columbia.

(5) Any person who shall wilfully swear falsely in any proceeding or hearing before the Board shall be deemed guilty of perjury.

(6) The Board shall issue written decisions and orders no later than 120 days following hearings, and shall publish and maintain a compilation of its decisions and orders.

(7) All hearings held and all meetings, except administrative meetings, at which official action is taken by the Board shall be open to the public, and all deliberations pursuant to matters requiring official Board action shall be conducted at public meetings. The Board shall take reasonable steps to facilitate coverage of its meetings and hearings by the news media.

(8) A majority of the members of the Board shall constitute a quorum for the purpose of conducting hearings and taking official actions.

(9) The action of the Board on any question of fact shall be final and conclusive, except in cases subject to review by the Mayor as provided in § 25-118.

(d) The Board shall carry out any other powers and duties that the Council may assign to it by law. (Jan. 24, 1934, 48 Stat. 322, ch. 4, § 6; Aug. 27, 1935, 49 Stat. 897, ch. 756, § 2; 1973 Ed., § 25-106; Sept. 29, 1982, D.C. Law 4-157, §§ 3, 15, 29 DCR 3617; Mar. 8, 1984, D.C. Law 5-51, § 2(b)(2), 30 DCR 5927; Mar. 7, 1987, D.C. Law 6-217, § 3, 34 DCR 907; May 24, 1994, D.C. Law 10-122, § 2(c), 41 DCR 1658.)

Cross references. — As to rules and regulations, see §§ 1-319 and 25-107.

As to administrative procedure, see § 1-1501 et seq.

As to judicial review, see §§ 1-1501 and 11-722.

As to causes for revocation or suspension of licenses, see §§ 25-115, 25-118 to 25-120 and 25-122.

As to permits under Beverage License Law, see § 25-131.

As to refund of fees when license is refused, see § 47-1318.

As to license provisions for regulation, modification or elimination of license requirements and promulgation of regulations, see §§ 47-2842 and 47-2844.

Effect of amendments. — D.C. Law 10-122, in the first sentence in (c)(7), inserted “except administrative meetings” and added the language beginning “and all deliberations” at the end.

Legislative history of Law 4-157. — See note to § 25-103.

Legislative history of Law 5-51. — See note to § 25-104.

Legislative history of Law 6-217. — See note to § 25-103.

Legislative history of Law 10-122. — See note to § 25-130.1.

History of Alcoholic Beverage Control Board. — See note to § 25-104.

Court lacked jurisdiction where no contested case. — The Appellate Court lacked jurisdiction to hear allegations of violations of the Alcohol Beverage Control Act where the Alcohol Beverage Control Board’s action at issue did not arise out of a contested case proceeding. *Jones v. District of Columbia ABC Bd.*, App. D.C., 621 A.2d 385 (1993).

Mayor may not cause indefinite suspension. — While an appeal from an order of the Board revoking a liquor license is suspended until the final decision of the Mayor, the Mayor has no right to cause the suspension to continue indefinitely by refusing to decide the issue of fact. *Lambros v. Young*, 145 F.2d 341 (D.C. Cir. 1944).

Consecutive suspensions. — Since separate suspensions of liquor license for 21 days in the first case and 17 days in the second case were not strictly for separate acts constituting violations on separate days but for a continuous course of conduct, and investigation in both cases was completed 30 days before hearing in first case, the two cases should have been treated as one case and the licensee was entitled to review of suspension by commissioners on theory that license was suspended for period of more than 30 days. *James Bakalis & Nickie*

Bakalis, Inc. v. Simonson, 434 F.2d 515 (D.C. Cir. 1970).

Certificate of occupancy. — Under regulation of Alcoholic Beverage Control Board that no license shall be issued to any person unless he is holder of a certificate of occupancy issued under authority of Zoning Act, where a temporary certificate of occupancy had been issued to license applicant under equity powers of United States District Court, not under authority of Zoning Act, issuance of temporary certificate of occupancy did not allow reissuance of retailer's class "C" liquor license for a restaurant and lounge on the property. *Boley v. District of Columbia ABC Bd.*, App. D.C., 292 A.2d 807 (1972).

Decision of the Board rejecting an application for renewal of a license was not reviewable by the Council of the District of Columbia. *Minkoff v. Payne*, 210 F.2d 689 (D.C. Cir. 1953).

Board finding authorized despite absence of Council regulation. — The Board is authorized to make a finding that 2 liquor stores within 300 feet proximity are inappropriate notwithstanding the absence of any formal regulation promulgated by the Council of the District of Columbia regarding necessary distances between liquor stores. *Pollack v. Simonson*, 350 F.2d 740 (D.C. Cir. 1965).

Board ruling not reviewable when justified. — Where the ruling of the majority of the Board denying application for a license is based upon sound legal principles and upon substantial evidence, judicial review is not justified. *Clore Restaurant, Inc. v. Payne*, 72 F. Supp. 677 (D.D.C. 1947).

Court may not disturb action unless plainly wrong or without support. — A court may not disturb any action of the Board in the exercise of its statutory powers, unless that action is plainly wrong or without the support of substantial evidence in the administrative record. *Muir v. District of Columbia ABC Bd.*, App. D.C., 450 A.2d 412 (1982).

Court may not substitute its judgment. — The mere existence of substantial evidence contrary to the Board's findings does not allow a reviewing court to substitute its judgment for that of the Board. *Muir v. District of Columbia ABC Bd.*, App. D.C., 450 A.2d 412 (1982).

Findings overturned where substantial evidence is lacking. — Under this section,

the findings of the Board can be overturned by the Court of Appeals only if they are without substantial evidence to support them. *Sophia's, Inc. v. ABC Bd.*, App. D.C., 268 A.2d 799 (1970).

Arbitrary and capricious denial of license could justify intrusion by judiciary. — Although the Board is the expert body given the right, power and jurisdiction over issuance, transfer, revocation and suspension of liquor licenses, there could come a point when the Board's denial of a license would evidence such arbitrary and capricious conduct that a court order mandating issuance of a license would become necessary and appropriate. *Jameson's Liquors, Inc. v. District of Columbia ABC Bd.*, App. D.C., 384 A.2d 412 (1978).

Right of review in a license case is not restricted to store owners immediately adjacent to the licensed premises nor to unsuccessful applicants, and property owners who at the hearing had presented the "wishes of the neighborhood" were entitled to seek judicial review. *Palisades Citizens Ass'n v. Weakly*, 166 F. Supp. 591 (D.D.C. 1958), rev'd on other grounds sub nom. *MacArthur Liquors, Inc. v. Palisades Citizens Ass'n*, 265 F.2d 372 (D.C. Cir. 1959).

Board member's dual involvement does not overcome fairness presumption. — Fact that a member of the Board was involved in both the investigation and determination of a case involving the application for a license is not sufficient to overcome the presumption of fairness and is not enough to mandate the setting aside of the Board's granting of a license. *Citizens Ass'n v. District of Columbia ABC Bd.*, App. D.C., 359 A.2d 295 (1976).

Evidence supports revocation of license. — Evidence was sufficient to support the findings of the Board in revoking petitioner's license, by allowing the licensed premises to be used for an unlawful purpose, failing to frame its license under glass and post it in a conspicuous place on the premises, and in failing to superintend in person, or through an approved manager, the business for which the license was issued. *2447 Good Hope Rd., Inc. v. District of Columbia ABC Bd.*, App. D.C., 295 A.2d 513 (1972).

Cited in *Pollack v. Simonson*, 350 F.2d 740 (D.C. Cir. 1965); *Citizens Ass'n v. District of Columbia ABC Bd.*, App. D.C., 280 A.2d 309 (1971).

§ 25-107. Council authorized to make rules and regulations.

(a) The Council of the District of Columbia is hereby authorized to prescribe such rules and regulations not inconsistent with this chapter as it may deem necessary to carry out the purposes thereof and to control and regulate the manufacture, sale, keeping for sale, offer for sale, solicitation of orders for sale,

importation, exportation, and transportation of alcoholic beverages in the District of Columbia for the protection of the public health, comfort, safety, and morals, and the Council of the District of Columbia is further authorized to prescribe such rules and regulations not inconsistent with this chapter as it may deem necessary to properly and adequately control the consumption of alcoholic beverages on premises licensed under § 25-111(a)(12), with specific authority to prescribe the hours during which alcoholic beverages may be consumed on such premises.

(b) The Council of the District of Columbia shall have authority to make rules and regulations for the issuance, transfer, and revocation, suspension, and acceptance of offers in compromise in lieu of suspension of licenses; to facilitate and insure the collection of taxes; to govern the operation of the business of licensees, with full power and authority to prescribe the terms and conditions under which alcoholic beverages may be sold by each class of licensees; to forbid the issuance of licenses for manufacture, sale, or storage of alcoholic beverages in such localities in, and such sections and portions of, the District of Columbia as the Council may deem proper in the public interest; to limit the number of licenses of each class to be issued in the District of Columbia and to limit the number of licenses of each class in any locality in, or sections or portions of, the District of Columbia as the Council may deem proper in the public interest; to forbid the issuance of licenses for businesses conducted on such premises as the Council, in the public interest, may deem inappropriate; to forbid the issuance of any class or classes of licenses for businesses established subsequent to January 24, 1934, near or around schools, colleges, universities, churches, or public institutions; to prescribe the hours during which alcoholic beverages may be sold; and to prohibit the sale of any or all alcoholic beverages on such days as the Council determines necessary in the public interest.

(c) The powers and authorities expressly enumerated are to be construed as in addition to, and not by way of limitation of, the general powers herein granted. Different regulations may be prescribed for the different classes of licenses, for the different classes of beverages, and for different localities in or sections or portions of the District of Columbia.

(d) Any regulations promulgated hereunder shall become effective 5 days after being published in any daily newspaper of general circulation in the District of Columbia. Such regulations may be altered or amended from time to time as the Council of the District of Columbia may deem desirable. The Mayor shall also have authority in any time of public emergency, without previous notice or advertisement, to prohibit the sale of any or all beverages during the period of such emergency.

(e)(1) The Mayor is authorized to submit to the Council proposed rules to implement the 1986 act, if he or she determines that rules in addition to those contained in the 1986 act are necessary. Rules proposed by the Mayor pursuant to this paragraph shall be submitted no later than 120 days from March 7, 1987, for a 45-day period of review, excluding Saturdays, Sundays, holidays, and days of Council recess. The Council, by resolution, may approve or disapprove the proposed rules in whole or in part. The rules shall take effect

upon approval by the Council, or upon expiration of the 45-day review period, whichever occurs first.

(2) In addition to rules proposed pursuant to paragraph (1) of this subsection, the Mayor from time to time may submit to the Council proposed rules to implement any of the provisions of this chapter for a 45-day period of review, excluding Saturdays, Sundays, holidays, and days of Council recess. Notwithstanding any other provision of law other than this chapter, the Mayor additionally may propose rules regarding the hours of service of food at establishments licensed pursuant to this chapter. The Council, by resolution, may approve or disapprove the proposed rules in whole or in part. The rules shall take effect upon approval by the Council, or upon expiration of the 45-day review period, whichever occurs first. (Jan. 24, 1934, 48 Stat. 322, ch. 4, § 7, June 29, 1953, 67 Stat. 102, ch. 159, § 404(a); Oct. 4, 1961, 75 Stat. 820, Pub. L. 87-389, § 3; Aug. 2, 1968, 82 Stat. 616, Pub. L. 90-450, title IV, § 403; Sept. 22, 1970, 84 Stat. 853, Pub. L. 91-405, title II, § 204(f); Jan. 5, 1971, 84 Stat. 1940, Pub. L. 91-650, title VII, § 706; 1973 Ed., § 25-107; Mar. 5, 1981, D.C. Law 3-157, § 2(a), 27 DCR 5117; Sept. 29, 1982, D.C. Law 4-157, §§ 4, 15, 29 DCR 3617; Mar. 8, 1984, D.C. Law 5-51, § 2(b)(3), 30 DCR 5927; Feb. 24, 1987, D.C. Law 6-192, § 26(a), 33 DCR 7836; Mar. 7, 1987, D.C. Law 6-217, § 4, 34 DCR 907.)

Cross references. — As to rules and regulations, see §§ 1-319, 25-106, 25-111, 25-112, 25-115, 25-124, and 25-138.

As to penalties for violations of chapter or rules and regulations, see §§ 25-118 and 25-132.

As to Council authorized to change tax rates, see § 47-504.

As to authority of Mayor to make rules and regulations under the District of Columbia Revenue Act of 1956, see § 47-1816.2.

Section references. — This section is referred to in § 25-115.

Legislative history of Law 3-157. — Law 3-157, the “Alcoholic Beverage Control Act Amendments of 1980,” was introduced in Council and assigned Bill No. 3-256, which was referred to the Committee on Public Services and Consumer Affairs. The Bill was adopted on first and second readings on October 14, 1980 and October 28, 1980, respectively. Signed by the Mayor on November 10, 1980, it was assigned Act No. 3-284 and transmitted to both Houses of Congress for its review.

Legislative history of Law 4-157. — See note to § 25-103.

Legislative history of Law 5-51. — See note to § 25-104.

Legislative history of Law 6-192. — Law 6-192, the “Technical Amendments Act of 1986,” was introduced in Council and assigned Bill No. 6-544, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on November 5, 1986 and November 18, 1986, respectively. Signed by the

Mayor on December 10, 1986, it was assigned Act No. 6-246 and transmitted to both Houses of Congress for its review.

Legislative history of Law 6-217. — See note to § 25-103.

Approval and disapproval of proposed rules. — Pursuant to Resolution 7-278, the “District of Columbia Alcoholic Beverage Control Act Proposed Rules Approval and Disapproval Resolution of 1988,” effective June 14, 1988, the Council approved, in part, and disapproved, in part, proposed rules issued pursuant to the Alcoholic Beverage Control Act.

Glover Park Liquor License Moratorium Approval Resolution of 1995. — Pursuant to Proposed Resolution 11-77, deemed approved May 18, 1995, Council approved amendments to Chapter 3 of Title 23 of the District of Columbia Municipal Regulations to impose a five (5) year moratorium on the issuance of retailer’s license classes A, B, CN, CR, CT, CX, DN, DT, and DX in a portion of the Glover Park District.

Delegation of authority. — See Mayor’s Order 88-42, February 16, 1988.

Implementing regulations. — Pursuant to this section, the following regulations were adopted in 1980: The “Alcoholic Beverage Control Board Rules of Procedures Amendments of 1980” (D.C. Law 3-146, Mar. 5, 1981, 27 DCR 4753).

Authority not retroactive. — Council’s authority to make regulations for issuance of liquor licenses and to forbid issuance of liquor licenses for businesses established after Janu-

ary 24, 1934, near schools, precluded regulations forbidding liquor licenses to businesses established prior to that date, because they are near schools. *Hensel v. ABC Bd.*, 321 F.2d 754 (D.C. Cir. 1963).

Administrative interpretation not entitled to judicial deference. — Alcoholic Beverage Control Board's interpretation of regulations governing extensions of credit from wholesalers of alcoholic beverages to retailers was not entitled to judicial deference where administrative construction of regulations was neither long-standing nor consistent. *Superior Beverages, Inc. v. District of Columbia ABC Bd.*, App. D.C., 567 A.2d 1319 (1989).

Term "payment in full" as used in regulations governing extensions of credit from wholesalers of alcoholic beverages to retailers refers to the terms of the parties purchase agreement and does not apply to the actual amount the wholesaler charges or the retailer agrees to pay. *Superior Beverages, Inc. v. District of Columbia ABC Bd.*, App. D.C., 567 A.2d 1319 (1989).

Double jeopardy. — Convictions for violations of this chapter and the Liquor Taxing Act of 1934 did not place defendant in double jeopardy, the evidence required in the two cases being different. *Sims v. Rives*, 84 F.2d 871 (D.C. Cir.), cert. denied, 298 U.S. 682, 56 S. Ct. 960, 80 L. Ed. 1402 (1936), overruled on other grounds, *Neild v. District of Columbia*, 110 F.2d 246 (D.C. Cir. 1940).

Unauthorized beer tax regulation. — Regulation of the Council taxing beer in warehouses before it was sold was not authorized. *American Sales Co. v. District of Columbia*, 292 F.2d 751 (D.C. Cir. 1961).

Cited in Press Liquors, Inc. v. Weakley, 317 F.2d 135 (D.C. Cir. 1963); *Palace Restaurant, Inc. v. ABC Bd.*, App. D.C., 271 A.2d 561 (1970); *Citizens Ass'n v. District of Columbia ABC Bd.*, App. D.C., 279 A.2d 514 (1971); *Vestry of Grace Parish v. District of Columbia ABC Bd.*, App. D.C., 366 A.2d 1110 (1976).

§ 25-108. Alcohol used for nonbeverage purposes.

(a) No provision of this chapter shall apply to alcohol intended for use in the manufacture and sale of any of the following when they are unfit for beverage purposes, namely:

- (1) Denatured alcohol produced and used pursuant to acts of Congress and regulations promulgated thereunder;
- (2) Patent, proprietary, medicinal, pharmaceutical, antiseptic, and toilet preparations;
- (3) Flavoring extracts, syrups, and food products; or
- (4) Scientific, chemical, mechanical, and industrial products.

(b) Any person who shall knowingly sell any of the products enumerated in paragraph (1), (2), (3), or (4) of subsection (a) of this section for beverage purposes, or who shall sell any of the same under circumstances from which he might reasonably deduce the intention of the purchaser to use them for such purposes, shall be subject to the penalties provided for in § 25-132. (Jan. 24, 1934, 48 Stat. 323, ch. 4, § 8; 1973 Ed., § 25-108.)

Cross references. — As to exemption from taxation, see § 25-124.

§ 25-109. Manufacture or sale of alcoholic beverage without license prohibited; exception.

(a)(1) No individual, partnership, association, or corporation shall, within the District of Columbia, manufacture for sale, keep for sale, or sell any alcoholic beverage without having first obtained a license under this chapter for such manufacture or sale, except as provided in § 25-131.

(2) It shall be unlawful for any person operating any premises where food, nonalcoholic beverages, or entertainment are sold or provided for compensation, and where facilities are especially provided and service is rendered for the consumption of alcoholic beverages, who does not possess a license under this chapter, to permit the consumption of such alcoholic beverages on such premises.

(b)(1) No individual shall, within the District of Columbia, offer for sale or solicit any order for the sale of any alcoholic beverage to District licensees, irrespective of whether such sale is to be made within or without the District of Columbia, unless such individual has first obtained a license of the character described in § 25-111(a)(11).

(2) Nothing in this subsection shall apply to any offer for sale or solicitation made upon the premises designated in the license of the vendor.

(3) No individual shall within the District of Columbia offer any beverage for sale to, or solicit orders for the sale of any beverage from, any person not a licensee under this chapter, irrespective of whether such sale is to be made within or without the District of Columbia.

(c) A physician may administer alcoholic beverages to a bona fide patient in cases of actual need when, in the judgment of the physician, the use of alcoholic beverages is necessary.

(d) A dentist who deems it necessary that a bona fide patient being then under treatment by him is in actual need of and should be supplied with alcoholic beverages as a stimulant or restorative, may administer to the patient alcoholic beverages.

(e) A veterinarian who deems it necessary may, in the course of his practice, administer or cause to be administered alcoholic beverages to a dumb animal.

(f) A person in charge of an institution regularly conducted as a hospital or sanatorium for the care of persons in ill health, or as a home devoted exclusively to the care of aged people, may administer or cause to be administered alcoholic beverages to any bona fide patient or inmate of the institution who is in need of the same, either by way of external application or otherwise for emergency medicinal purposes, and may charge for the alcoholic beverages so administered. (Jan. 24, 1934, 48 Stat. 323, ch. 4, § 9; June 29, 1953, 67 Stat. 102, ch. 159, § 404(b); 1973 Ed., § 25-109; Sept. 29, 1982, D.C. Law 4-157, § 5, 29 DCR 3617; Feb. 24, 1987, D.C. Law 6-192, § 26(b), 33 DCR 7836.)

Cross references. — As to presence or employment in illegal establishments, see § 22-1515.

Legislative history of Law 4-157. — See note to § 25-103.

Legislative history of Law 6-192. — See note to § 25-107.

Failure to prove location not grounds for reversal. — In a prosecution for keeping and selling alcoholic beverages without a license, the failure of the government to offer specific proof that the offenses were committed in the District of Columbia was not grounds for

reversal. *Hoover v. District of Columbia*, App. D.C., 42 A.2d 730 (1945).

Joint defendants. — In prosecution for violations of the Alcoholic Beverage Control Law, defendants were properly charged and tried together since it would be assumed that average jury would not be so bereft of intelligence and discrimination that it would be unable to properly decide if any of the defendants had violated law. *Simato v. District of Columbia*, App. D.C., 108 A.2d 376 (1954).

Continuous possession of evidence. — In prosecution for unlicensed sale of alcoholic bev-

erages, evidence established sufficient proof of continuous possession by the Government of the bottled evidence by the Bureau of Internal Revenue so as to justify denial of directed verdict of acquittal though there was no testimony by receiving clerk as to his possession and disposition of the bottles. *Kelly v. District of Columbia*, App. D.C., 102 A.2d 308 (1954).

Suppression of evidence not justified. — Where a police officer under an assumed name joined a nonprofit social club operating an after-hours bottle club which would not have given him a membership card had they known he was an officer, and membership was available to anyone who paid a fee, there was no fraudulent entry which would warrant suppression of evidence in a prosecution under this section. *Stagecrafters' Club, Inc. v. District of Columbia*, App. D.C., 89 A.2d 876 (1952).

Exclusion of evidence based on improper search. — Where police officer purchased whiskey from a party with marked money, and another officer appeared with a warrant for the party's arrest, whereupon the arrested party stated he had purchased the whiskey from defendant, officers had no right to search the defendant, and evidence found in the search should have been excluded in a prosecution under this section. *Smallwood v. District of Columbia*, App. D.C., 116 A.2d 599 (1955).

Valid execution of search warrant. — Where defendants were charged with violating this section, the intervention of Sunday did not prevent a valid execution of a search warrant. *Edwards v. District of Columbia*, App. D.C., 68 A.2d 286 (1949).

Convictions admissible in later suit. — Where the sole issue determined by convictions of the corporate tenant and its officers was sale of liquor on leased premises in violation of this section, they were admissible as evidence of unlawful use of premises by tenant in subsequent suit. *Stagecrafters' Club, Inc. v. District of Columbia Div. of Am. Legion*, 111 F. Supp. 127 (D.D.C. 1953), *aff'd*, 211 F.2d 811 (1954).

Consecutive sentences improper. — Imposition of consecutive 120-day sentences for a violation under this section was improper as constituting double punishment for a single offense where the defendant sold only a single bottle of whiskey at the time of his arrest. *Hicks v. District of Columbia*, App. D.C., 234 A.2d 801 (1967).

Rent acceptance does not waive forfeiture clause. — Landlord's acceptance of rent after tenant's conviction for selling liquor on leased premises without a license does not constitute a waiver of his right to forfeit lease for breach of tenant's covenant that premises would not be used for any unlawful purpose. *Stagecrafters' Club, Inc. v. District of Columbia Div. of Am. Legion*, 110 F. Supp. 481 (D.D.C.), supplemental opinion, 111 F. Supp. 127 (D.D.C. 1953), *aff'd*, 211 F.2d 811 (D.C. Cir. 1954).

Cited in *Young v. District of Columbia*, App. D.C., 102 A.2d 754 (1954); *Jackson v. District of Columbia*, App. D.C., 125 A.2d 50 (1956); *Turner v. District of Columbia*, App. D.C., 132 A.2d 149 (1957); *Williams v. District of Columbia*, App. D.C., 167 A.2d 893 (1961); *Baer v. District of Columbia*, App. D.C., 182 A.2d 839 (1962).

§ 25-110. Licenses — Issuance authorized; records.

(a) The Board is authorized to issue licenses to individuals, partnerships, or corporations, but not to unincorporated associations, on application duly made therefor, for the manufacture, sale, offer for sale, consumption on premises of clubs where food, nonalcoholic beverages, or entertainment are sold or provided for compensation, or solicitation of orders for sale of alcoholic beverages within the District of Columbia. The Board shall keep a full record of all applications for licenses, and of all recommendations for and remonstrances against the granting of licenses and of the action taken thereon.

(b) The Board, in issuing licenses, may require that certain conditions be met if it determines that the inclusion of the conditions will be in the best interest of the locality, section, or portion of the District where the licensed establishment is to be located. The Board in setting such conditions must state in writing the rationale for such decisions. (Jan. 24, 1934, 48 Stat. 324, ch. 4, § 10; June 29, 1953, 67 Stat. 103, ch. 159, § 404(c); 1973 Ed., § 25-110; May 24, 1994, D.C. Law 10-122, § 2(d), 41 DCR 1658.)

Cross references. — As to notice of applications for licenses to advisory neighborhood commissions, see § 1-261.

Section references. — This section is referred to in § 25-130.1.

Effect of amendments. — D.C. Law 10-122 added (b).

Legislative history of Law 10-122. — See note to § 25-130.1.

History of Alcoholic Beverage Control Board. — See note to § 25-104.

Arbitrary rejection. — Rejection by the Board of an application for a license on the ground that the area was adequately serviced, was arbitrary and capricious, in the absence of any evidence on the point. *Clore Restaurant, Inc. v. Payne*, 72 F. Supp. 677 (D.D.C. 1947).

§ 25-111. Same — Classifications; fees.

(a) Licenses issued under authority of this chapter shall be of 22 kinds:

(1) *Manufacturer's license, class A.* — To operate a rectifying plant, a distillery, or a winery. Such a license shall authorize the holder thereof to operate a rectifying plant for the manufacture of the products of rectification by purifying or combining alcohol, spirits, wine, or beer; a distillery for the manufacture of alcohol or spirits by distillation or redistillation; or a winery for the manufacture of wine; at the place therein described, but such license shall not authorize more than 1 of said activities, namely, that of a rectifying plant, a distillery, or a winery, and a separate license shall be required for each such plant. Such a license shall also authorize the sale from the licensed place of the products manufactured under such license by the licensee to another license holder under this chapter for resale or to a dealer licensed under the laws of any state or territory of the United States for resale. It shall not authorize the sale of beverages to any other person except as may be provided by regulations promulgated by the Council of the District of Columbia under this chapter. The annual fee for such license for a rectifying plant shall be \$6,000; for a distillery shall be \$6,000; and for a winery shall be \$1,500; provided, however, that if a manufacturer shall operate a distillery only for the manufacture of alcohol and more than 50% of such alcohol is sold for nonbeverage purposes, the annual fee shall be \$3,000. If said manufacturer holding a license issued at the rate last mentioned shall sell during any license period 50% or more of said alcohol for beverage purposes, he shall pay to the Director of the Department of Finance and Revenue the difference between the license fee paid and the license fee for a distiller of spirits.

(2) *Manufacturer's license, class B.* — To operate a brewery. Such a license shall authorize the holder thereof to operate a brewery for the manufacture of beer at the place therein described. It shall also authorize the sale from the licensed place of the beer manufactured under such license to another license holder under this chapter for resale, or to a dealer licensed under the laws of any state or territory of the United States for resale, or to a consumer. Said manufacturer may sell beer to the consumer only in barrels, kegs, and sealed bottles and said barrels, kegs, and bottles shall not be opened after sale, nor the contents consumed, on the premises where sold. The annual fee for such license shall be \$5,000.

(3) *Wholesaler's license, class A.* — Such a license shall authorize the holder thereof to sell beverages from the place therein described to another license holder under this chapter for resale or to a dealer licensed under the laws of any state or territory of the United States for resale, and, in addition,

in the case of beer or light wines, to a consumer, said beverages to be sold only in barrels, kegs, sealed bottles, and other closed containers, which said barrels, kegs, sealed bottles, and other closed containers shall not be opened after sale, nor the contents consumed, on the premises where sold. It shall not authorize the sale of beverages to any other person except as may be provided by regulations promulgated by the Council of the District of Columbia under this chapter. No holder of such a license except a wholesale druggist or a wholesale grocer shall be engaged in any business on the premises for which the license is issued other than the sale of alcoholic and nonalcoholic beverages. The annual fee for such license shall be \$4,000.

(4) *Wholesaler's license, class B.* — Such a license shall authorize the holder thereof to sell beer and light wines from the place therein described to another license holder for resale or to a dealer licensed under the laws of any state or territory of the United States for resale, or to a consumer in barrels, kegs, sealed bottles, and other closed containers, which said barrels, kegs, sealed bottles, and other closed containers shall not be opened after sale nor the contents consumed on the premises where sold. The annual fee for such license shall be \$2,000.

(5) *Retailer's license, class A.* — Such a license shall authorize the holder thereof to sell beverages from the place therein described and to deliver the same in the barrel, keg, sealed bottle, or other closed container in which the same was received by the licensee, which said barrel, keg, sealed bottle, or other closed container shall not be opened nor the contents consumed on the premises where sold. Such license shall not authorize the licensee to sell to other licensees for resale. The annual fee for such license shall be \$2,000.

(6) *Retailer's license, class B.* — Such a license shall authorize the holder thereof to sell beer and light wines from the place therein described and to deliver the same in the barrel, keg, sealed bottle, or other closed container in which the same was received by the licensee, which said barrel, keg, sealed bottle, or other closed container shall not be opened nor the contents consumed on the premises where sold. Such license shall not authorize the licensee to sell to other licensees for resale. The annual fee for such license shall be \$1,000.

(7) *Retailer's licenses, class C.* — (A) A retailer's license, class C authorizes the holder to keep for sale and to sell spirits, wine, and beer at the premises described on the license for consumption only on these premises. All alcoholic beverages offered for sale or sold by the licensee may be displayed and dispensed in full sight of the purchaser.

(B) There shall be 5 kinds of retailer's licenses, class C, each of which shall designate the type of establishment holding the license.

(C) A retailer's license, class C/R shall be issued only for a bona fide restaurant that keeps its kitchen facilities open until 2 hours prior to closing.

(D) A retailer's license, class C/T shall be issued only for a tavern.

(E) A retailer's license, class C/N shall be issued only for a nightclub.

(F) A retailer's license, class C/H shall be issued only for a hotel. The license authorizes the sale and service of alcoholic beverages for consumption in the dining rooms, lounges, banquet halls, and other similar facilities on the licensed premises, and in the private rooms of registered guests. The license

shall not authorize the sale and service of alcoholic beverages for consumption in a nightclub on the premises of the hotel. The holder of a retailer's license, class C/H may also be issued a retailer's license, class C/N for a nightclub on the premises of the hotel.

(G)(i) A retailer's license, class C/X shall be issued only for a club, a legitimate theater, the Washington Convention Center, a passenger-carrying marine vessel serving food, or a club car or dining car on a railroad.

(ii) No license shall be issued for a club that has not been established for at least 3 months immediately prior to applying for the license.

(iii) Any company operating a railroad in interstate commerce of 100 miles or more may be issued a single license covering all of the railroad's dining cars and club cars. The license shall identify the railroad dining cars and club cars covered by the license, and shall be kept on display at the licensee's principal place of business in the District.

(iv) Any company operating a passenger-carrying marine vessel line in the District may be issued a single license covering all of its passenger-carrying marine vessels serving food and dockside waiting areas for its passengers. The license shall identify the passenger-carrying marine vessels and dockside waiting areas covered by the license, and shall be kept on display at the licensee's principal place of business in the District. A license issued pursuant to this subparagraph shall not cover any permanently berthed vessel.

(H) The holders of any kind of retailer's licenses, class C shall not sell or serve alcoholic beverages in any closed container, except that hotels may sell and serve alcoholic beverages in closed containers in the private rooms of registered guests and clubs may sell and serve alcoholic beverages in closed containers in any room or area available only to bonafide members of the club or their guests.

(I) Annual fees for retailer's licenses, class C, shall be charged according to the following schedule, except that the Mayor shall establish the fee for the Washington Convention Center. Capacity shall be the posted level of occupancy approved pursuant to the Construction Codes for the District. The fees shall be as follows:

<i>Class</i>	<i>Capacity</i>	<i>Fee</i>
C/R, restaurant	99 or fewer	\$ 500
C/R, restaurant	100 to 199	1,000
C/R, restaurant	200 to 499	1,500
C/R, restaurant	500 or more	2,000
C/T, tavern	99 or fewer	800
C/T, tavern	100 to 199	1,600
C/T, tavern	200 or more	2,400
C/N, nightclub	199 or fewer	1,500
C/N, nightclub	200 to 499	2,500
C/N, nightclub	500 to 999	3,500

<i>Class</i>	<i>Capacity</i>	<i>Fee</i>
C/N, nightclub	1,000 or more	4,500
C/H, hotel	99 or fewer guest rooms	2,000
C/H, hotel	100 or more guest rooms	4,000
C/X, club		1,000
C/X, legitimate theater		1,000
C/X, marine vessel, single vessel		1,500
C/X, marine vessel line for		
3 or fewer vessels and		
dockside waiting areas		2,500
for each additional vessel		
or dockside waiting area		1,000
C/X, railroad dining or club car, single car		500
C/X, railroad company, all dining or club cars		1,500

(8) *Retailer’s licenses, class D.* — (A) A retailer’s license, class D authorizes the holder to keep for sale and to sell wine and beer on the premises described on the license for consumption only on these premises. All alcoholic beverages offered for sale or sold by the licensee may be displayed and dispensed in full sight of the purchaser.

(B) There shall be 5 kinds of retailer’s licenses, class D, each of which shall designate the type of establishment holding the license.

(C) A retailer’s license, class D/R shall be issued only for a bona fide restaurant.

(D) A retailer’s license, class D/T shall be issued only for a tavern.

(E) A retailer’s license, class D/N shall be issued only for a nightclub.

(F) A retailer’s license, class D/H shall be issued only for a hotel. The license authorizes the sale and service of wine and beer for consumption in the dining rooms, lounges, banquet halls, and other similar facilities on the licensed premises, and in the private rooms of registered guests. The license shall not authorize the sale and service of wine and beer for consumption in a nightclub on the premises of the hotel. The holder of a retailer’s license, class D/H may also be issued a retailer’s license, class D/N for a nightclub on the premises of the hotel.

(G)(i) A retailer’s license, class D/X shall be issued only for a club, a legitimate theater, the Washington Convention Center, a passenger-carrying marine vessel serving food, or a club car or dining car on a railroad.

(ii) No license shall be issued for a club that has not been established for at least 3 months immediately prior to applying for the license.

(iii) Any company operating a railroad in interstate commerce of 100 miles or more may be issued a single license covering all of the railroad’s dining cars and club cars. The license shall identify the railroad dining cars and club cars covered by the license, and shall be kept on display at the licensee’s principal place of business in the District.

(iv) Any company operating a passenger-carrying marine vessel line in the District may be issued a single license covering all of its passenger-

carrying marine vessels serving food and dockside waiting areas for its passengers. The license shall identify the passenger-carrying marine vessels and dockside waiting areas covered by the license, and shall be kept on display at the licensee's principal place of business in the District of Columbia. A license issued pursuant to this subparagraph shall not cover any permanently berthed vessel.

(H) The holders of any type of retailer's licenses, class D shall not sell or serve wine or beer in any closed container, except that hotels may sell and serve wine or beer in closed containers in the private rooms of registered guests and clubs may sell and serve wine or beer in closed containers in any room or area available only to bona fide members of the club or their guests.

(I) Annual fees for retailer's licenses, class D, shall be charged according to the following schedule, except that the Mayor shall establish the fee for the Washington Convention Center. Capacity shall be the posted level of occupancy approved pursuant to the Construction Codes for the District. The fees shall be as follows:

<i>Class</i>	<i>Capacity</i>	<i>Fee</i>
D/R, restaurant	99 or fewer	\$ 300
D/R, restaurant	100 to 199	600
D/R, restaurant	200 to 499	900
D/R, restaurant	500 or more	1,200
D/T, tavern	99 or fewer	500
D/T, tavern	100 to 199	1,000
D/T, tavern	200 or more	1,500
D/N, nightclub	199 or fewer	1,000
D/N, nightclub	200 to 499	1,500
D/N, nightclub	500 to 999	2,000
D/N, nightclub	1,000 or more	3,500
D/H, hotel	99 or fewer guest rooms	1,000
D/H, hotel	100 or more guest rooms	2,000
D/X, club		500
D/X, legitimate theater		500
D/X, marine vessel, single vessel		750
D/X, marine vessel line, for		
3 or fewer vessels and		
dockside waiting areas		1,000
for each additional vessel or		
dockside waiting area		500
D/X, railroad dining or club car, single car		250
D/X, railroad company, all dining or club cars		750

(9) *Retailer's license, class E.* — Such a license shall authorize a person entitled to retail, compound, and dispense medicines and poisons, to sell from

the place therein described, beverages in sealed packages, not to exceed 1 quart each, for medical purposes, and only upon prescription of a duly licensed practicing physician for liquors as defined by the United States Pharmacopoeia. Such package shall not be opened after sale, nor its contents consumed, on the premises where sold. Such prescription, when filled, shall be canceled by writing across its face the word “canceled” together with the date on which it is presented and filled, and such prescriptions shall be numbered consecutively as filled and kept on file in consecutive order. No such prescription shall be refilled. The annual fee for such license shall be \$100.

(10) *Retailer’s license, class F.* — Such license shall authorize the holder thereof temporarily to sell beer and light wines on the premises therein described for consumption on the premises where sold. Such permits may be issued for a banquet, picnic, bazaar, fair, or similar public or private gathering, where food is served for consumption on the premises. No beer or light wines shall be sold or served to a customer in any unopened container. The issuance of such a permit shall be solely in the discretion of the Board. The fee for each such license shall be \$100 per day.

(10.1) *Retailer’s license, class G.* — Such a license shall authorize the holder thereof to sell spirits, wine, and beer for consumption, or to authorize the holder to permit the consumption of spirits, wine, and beer, on the premises therein described for 1 day only. Such licenses may be issued for a banquet, cabaret, dance, picnic, bazaar, fair, reception, or similar public or private gathering, where food is served for consumption on the premises. No spirits, wine, or beer shall be sold or served to a customer in any unopened container. The issuance of such a license shall be solely within the discretion of the Board. The fee for each license shall be established by the Mayor.

(11) *Solicitor’s license.* — Such a license shall authorize the licensee to offer for sale or to solicit orders from licensees for the sale of any beverage on behalf of the vendor whose name appears upon such license and whom the solicitor represents. The name of only 1 vendor shall appear upon the license but if the solicitor represents more than 1 vendor a license may be issued such solicitor for each vendor such solicitor represents. The annual fee for such license shall be \$250.

(12) *Consumption license for a club.* — Such a license shall be issued only for a club. The word “club” within the meaning of this paragraph is a corporation for the promotion of some common object (not including corporations organized or conducted for any commercial or business purpose, or for money profit), owning, hiring, or leasing a building or space in a building of such extent and character as in the judgment of the Board may be suitable and adequate for the reasonable and comfortable use and accommodations of its members and their guests; and the affairs and management of such corporation are conducted by a board of directors, executive committee, or similar body chosen by the members at least once each calendar year, and no officer, agent, or employee of the club is paid, directly or indirectly, or receives in the form of salary or other compensation, any profit from the conduct and operation of the club beyond the amount of such salary as may be fixed and voted by the members or by its directors or other governing body. No license shall be issued

to a club which has not been established for at least 3 months immediately prior to the making of the application for such license. Such a license shall authorize the holder thereof to permit consumption of alcoholic beverages on such parts of the licensed premises as may be approved by the Board. The annual fee for such a license shall be \$400.

(12.1)(A) Brew pub license for a licensed restaurant or tavern. Such a license shall be issued only to the holder of a retailer's license, class C/R, C/T, D/R, or D/T, or in conjunction with the issuance of a retailer's license, C/R, C/T, D/R, or D/T. A holder of a brew pub license may brew malt beverages at 1 location for consumption at a licensed restaurant or tavern. The location used to brew malt beverages shall be on or immediately adjacent to the licensed restaurant or tavern where the brewed beverage is sold to the public and shall be located in the brew-pub zone. The brew pub license shall be void if:

(i) The restaurant or tavern ceases to be operated as a restaurant or tavern; or

(ii) The licensee's retailer class C or class D license is revoked or transferred to a different location.

(B) If the licensee's class C or class D retailer license is suspended, the brew pub license shall be automatically suspended for the same period of time.

(C) The annual fee for a brew pub license shall be \$3,000.

(13) *License fee.* — (A) The fee shall be \$25 for an amendment to an Alcoholic Beverage Control license which results in an inspection of the licensed premises by the Alcoholic Beverage Control Board or staff.

(B) The Mayor may propose rules to alter the license fees established by this section. Proposed rules shall be submitted to the Council for a 45-day period of review, excluding Saturdays, Sundays, holidays, and days of Council recess. The Council, by resolution, may approve or disapprove the proposed rules in whole or in part. The rules shall take effect upon approval by the Council, or upon expiration of the 45-day review period, whichever occurs first.

(C) None of the provisions of the 1986 act shall be construed as providing grounds for canceling or voiding any lease or contract entered into in good faith, prior to March 7, 1987, by the holder of a license that was issued prior to March 7, 1987, who applies for a license in a category not established prior to enactment of the 1986 act.

(D) The holder of a retailer's license, class C/R, C/H, D/R, or D/H shall file with the Board quarterly statements, on the dates and in the manner prescribed by the Board, to show for the preceding quarter the total amount of receipts at the licensed establishment, the amount received for the sale of alcoholic beverages, the amount received for the sale of food, the total amount expended by the establishment for the purchase of food and alcoholic beverages, the amount expended for the purchase of food, and the amount expended for the purchase of alcoholic beverages. The Board shall make this information available to a protestant of a license, under conditions to be determined by the Board, except that commercial or financial information deemed to be proprietary information or trade secrets, the disclosure of which would result in substantial harm to the competitive position of the licensed establishment from which the information was obtained, shall not be made available in the case of a protest.

(b) Nothing in this chapter shall be construed as repealing any portion of Chapters 28 and 30 of Title 47. (Jan. 24, 1934, 48 Stat. 324, ch. 4, § 11; Apr. 30, 1934, 48 Stat. 654, ch. 181, § 1; June 18, 1934, 48 Stat. 997, ch. 588; July 2, 1935, 49 Stat. 444, ch. 359; Aug. 27, 1935, 49 Stat. 898, 899, ch. 756, §§ 3 — 7; June 15, 1938, 52 Stat. 691, ch. 396, §§ 1, 2; May 27, 1949, 63 Stat. 133, ch. 146, title V, § 501; June 29, 1953, 67 Stat. 103, ch. 159, § 404(d); May 31, 1962, 76 Stat. 89, Pub. L. 87-470, § 1; Dec. 8, 1970, 84 Stat. 1393, Pub. L. 91-535, § 2; 1973 Ed., § 25-111; Apr. 6, 1977, D.C. Law 1-102, § 2(a), (b), 23 DCR 8732; Apr. 18, 1978, D.C. Law 2-73, § 3, 24 DCR 7066; Mar. 5, 1981, D.C. Law 3-157, § 2(b), 27 DCR 5117; Sept. 29, 1982, D.C. Law 4-157, §§ 6, 15, 29 DCR 3617; Mar. 10, 1983, D.C. Law 4-204, § 2, 30 DCR 185; Aug. 2, 1983, D.C. Law, 5-16, § 3, 30 DCR 3193; Mar. 8, 1984, D.C. Law 5-51, § 2(a), 30 DCR 5927; Mar. 7, 1987, D.C. Law 6-217, § 5, 34 DCR 907; Aug. 17, 1991, D.C. Law 9-40, § 2(b), 38 DCR 4974; May 24, 1994, D.C. Law 10-122, § 2(e), 41 DCR 1658.)

Cross references. — As to refund of fees when licensed revoked, see § 25-118.

As to refund of fees, see § 25-131.

As to authorization of Council to change tax rates, see § 47-504.

As to refund of fees when licensed refused, see § 47-1318.

Section references. — This section is referred to in §§ 25-107, 25-109, 25-112, 25-115, 25-128, and 47-2404.

Effect of amendments. — D.C. Law 10-122 added the last sentence in (a)(13)(D).

Legislative history of Law 1-102. — Law 1-102, the “Standing Up Service Act,” was introduced in Council and assigned Bill No. 1-329, which was referred to the Committee on Public Services and Consumer Affairs. The Bill was adopted on first and second readings on September 15, 1976 and October 12, 1976, respectively. Signed by the Mayor on November 8, 1976, it was assigned Act No. 1-171 and transmitted to both Houses of Congress for its review.

Legislative history of Law 2-73. — See note to § 25-103.

Legislative history of Law 3-157. — See note to § 25-107.

Legislative history of Law 4-157. — See note to § 25-103.

Legislative history of Law 4-204. — See note to § 25-103.

Legislative history of Law 5-16. — See note to § 25-103.

Legislative history of Law 5-51. — See note to § 25-104.

Legislative history of Law 6-217. — See note to § 25-103.

Legislative history of Law 9-40. — See note to § 25-103.

Legislative history of Law 10-122. — See note to § 25-130.1.

History of Alcoholic Beverage Control Board. — See note to § 25-104.

Office of Collector of Taxes abolished. —

The Office of the Collector of Taxes was abolished and the functions thereof transferred to the Board of Commissioners of the District of Columbia by Reorganization Plan No. 5 of 1952. All functions of the Office of the Collector of Taxes including the functions of all officers, employees and subordinate agencies were transferred to the Director, Department of General Administration by Reorganization Order No. 3, dated August, 28, 1952. Reorganization Order No. 20, dated Nov. 10, 1952, transferred the functions of the Collector of Taxes to the Finance Office. The same Order provided for the Office of the Collector of Taxes headed by a Collector in the Finance Office, and abolished the previously existing Office of the Collector of Taxes. Reorganization Order No. 20 was superseded and replaced by Organization Order No. 121, dated December 12, 1957, which provided that the Finance Office (consisting of the Office of the Finance Officer, Property Tax Division, Revenue Division, Treasury Division, Accounting Division, and Data Processing Division) would continue under the direction and control of the Director of General Administration, and that the Treasury Division would perform the function of collecting revenues of the District of Columbia and depositing the same with the Treasurer of the United States. Organization Order No. 121 was revoked by Organization Order No. 3, dated December 13, 1957, Part IVC of which prescribed the functions of the Finance Office within a newly established Department of General Administration. The executive functions of the Board of Commissioners were transferred to the Commissioner of the District of Columbia by § 401 of Reorganization Plan No. 3 of 1967. Functions of the Finance Office as stated in Part IVC of Organization Order No. 3 were transferred to the Director of the Department of Finance and Revenue by Commissioner’s Order No. 69-96, dated March 7, 1969.

Standing to obtain judicial review of a claim that the Board improperly reissued retail liquor license depends upon the existence of a logical and direct nexus between the association's interest and the adverse action of the opposing parties. *Citizens Ass'n v. Simonson*, 403 F.2d 175 (D.C. Cir. 1968), cert. denied, 394 U.S. 975, 89 S. Ct. 1454, 22 L. Ed. 2d 755 (1969).

Finding required for renewal of restaurant's license. — Before the Board can rule that it may renew a Class C liquor license for a restaurant, the Board must make a finding that the restaurant's chief source of revenue is from the sale of meals and not beverages. *Upper Ga. Ave. Planning Comm. v. ABC Bd.*, App. D.C., 500 A.2d 987 (1985).

Press club not "club" under § 25-103(7). — Board properly denied a class C liquor license to a press club because it did not qualify as a "club" for purposes of § 25-103(7) where it was not equipped and did not plan to prepare any food on the premises for which a license was sought but food was to be catered or delivered. *Washington Press Club v. District of Columbia ABC Bd.*, App. D.C., 476 A.2d 1107 (1984).

Compliance with plumbing code does not undercut Board finding of inadequacy. — That an establishment is in compliance with the plumbing code does not undercut a finding by the Board that plumbing facilities were inadequate to render the establishment "appropriate" for reissuance of an ABC license. *LCP, Inc. v. District of Columbia ABC Bd.*, App. D.C., 499 A.2d 897 (1985).

Denial of application for Class B retailer's license was supported by substantial evidence. *Park v. District of Columbia ABC Bd.*, App. D.C., 555 A.2d 1029 (1989).

Cited in *Citizens Ass'n v. District of Columbia ABC Bd.*, App. D.C., 288 A.2d 666 (1972); *D.T. Corp. v. District of Columbia ABC Bd.*, App. D.C., 407 A.2d 707 (1979); *Haight v. District of Columbia ABC Bd.*, App. D.C., 439 A.2d 487 (1981); *Gerber v. District of Columbia ABC Bd.*, App. D.C., 499 A.2d 1193 (1985); *K.G.S., Inc. v. District of Columbia ABC Bd.*, App. D.C., 531 A.2d 1001 (1987); *Rong Yao Zhou v. Jennifer Mall Restaurant, Inc.*, App. D.C., 534 A.2d 1268 (1987).

§ 25-112. Prohibition of transportation of liquor into District authorized; special permit; fees.

The Council of the District of Columbia is hereby authorized in its discretion to require by regulation that no licensee holding a retailer's license, class A, B, C/R, C/T, C/N, C/H, C/X, D/R, D/T, D/N, D/H, D/X, or E, as provided in this chapter, shall transport, or cause to be transported, in any manner whatsoever into the District of Columbia any alcoholic beverage (except the regular stock on hand in a licensed railroad club or dining car or passenger-carrying marine vessel); and said Council is also authorized to permit such importation under a special permit or permits, to be issued by the Alcoholic Beverage Control Board, upon application by the licensee and upon such terms and conditions and in such manner as may be prescribed by the said Council. Any such regulation, permit, or system of permits may be suspended, amended, revoked, or abolished at any time by the said Council. The Mayor, by rule, may establish fees for importation permits in accordance with the provisions of § 25-111(a)(13)(B). (Aug. 27, 1935, 49 Stat. 903, ch. 756, § 18; 1973 Ed., § 25-112; Mar. 7, 1987, D.C. Law 6-217, § 6, 34 DCR 907.)

Cross references. — As to rules and regulations, see § 25-107.

As to transportation, see §§ 25-137 and 25-138.

Legislative history of Law 6-217. — See note to § 25-103.

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts

Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 402(217) of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to the District of Columbia Council, subject to the right of the Commissioner as provided in § 406 of the Plan. The District of Columbia Self-Government and Gov-

ernmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia,

respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

History of Alcoholic Beverage Control Board. — See note to § 25-104.

§ 25-113. Licenses — Holding of more than 1 class; “interest” defined; certain licenses held or pending on June 22, 1982.

(a) The holder of a manufacturer’s or wholesaler’s license issued hereunder shall not be entitled to hold any other class of license. A person, not licensed hereunder, owning an establishment for the manufacture of beverages located outside the District of Columbia may hold 1 wholesale license, and shall not be entitled to hold any other license.

(b) A licensee who holds any direct or indirect interest in a retailer’s license class C/R, C/T, C/N, C/H, C/X, D/R, D/T, D/N, D/H, or D/X, shall not hold any direct or indirect interest in any license other than a retailer’s license class C/R, C/T, C/N, C/H, C/X, D/R, D/T, D/N, D/H, D/X, E, or a brew pub license issued in conjunction with a class C/R, C/T, D/R, or D/T license. A licensee who holds any direct or indirect interest in a retailer’s license class A or class B shall not hold any direct or indirect interest in any license other than a retailer’s license class E. For purposes of this subsection, the term “interest” shall include, but not be limited to, any pecuniary interest in the operation, management, or profits of a licensed establishment. The term “interest” shall not include a bona fide agreement for the lease of real property.

(c) Any franchisee who controls or will control all interest in the receipts, profits, inventory, purchases, pricing, and sales of beverages under the license; and who held a license on June 22, 1982, or whose application for a license was pending on June 22, 1982, shall not be rejected solely on the basis of this section, as it existed on June 22, 1982, or as it exists as a result of amendments effected by § 7 of the Alcoholic Beverage Control Amendments Act of 1982. (Jan. 24, 1934, 48 Stat. 327, ch. 4, § 12; 1973 Ed., § 25-113; Sept. 29, 1982, D.C. Law 4-157, § 7, 29 DCR 3617; Mar. 7, 1987, D.C. Law 6-217, § 7, 34 DCR 907; Aug. 17, 1991, D.C. Law 9-40, § 2(c), 38 DCR 4974.)

Cross references. — As to forbidden business interests, see §§ 25-105, 25-115, 25-119, and 25-120.

Legislative history of Law 4-157. — See note to § 25-103.

Legislative history of Law 6-217. — See note to § 25-103.

Legislative history of Law 9-40. — See note to § 25-103.

References in text. — “Section 7 of the Alcoholic Beverage Control Amendments Act of 1982”, referred to at the end of subsection (c) of this section, is § 7 of D.C. Law 4-157.

Cited in Spevak v. District of Columbia ABC Bd., App. D.C., 407 A.2d 549 (1979).

§ 25-114. Same — Terms; fees; description of premises; storage of beverages.

(a) Except as provided in subsections (c) and (d) of this section, licenses issued pursuant to this chapter shall be for terms of 2 years, and may be renewed.

(b) License fees shall be charged and collected annually. The fee for the first year shall be paid at the time of application, and the fee for the second year shall be paid no later than 1 year from the date of issuance of the license. A licensee's failure to timely remit the second-year fee shall be grounds for the Board to suspend the license until the licensee pays the fee and any fines imposed by the Board for late payment.

(c) The Board may establish licensure periods at intervals necessary to facilitate efficient processing of applications. Each license shall begin and end on dates established by the Board. Whenever the Board changes a licensure period, the applicant for the license shall pay the appropriate proportionate amount of the annual license fee. Whenever the Board issues a license at other than the established date, the licensee shall pay the appropriate proportionate amount of the annual fee.

(d) Temporary retailer's licenses, class F shall be issued for periods specified by the Board. Retailer's licenses, class G shall be issued for 1 day only, for a date specified by the Board.

(e) Each license shall particularly describe the place where the rights of the license are to be exercised. Alcoholic beverages shall not be manufactured, kept for sale, or sold by any licensee on premises other than the premises designated on the license, except as provided in subsection (f) of this section.

(f) The Board may permit the storing of beverages upon premises other than the premises designated in the license by the holder of a (1) manufacturer's license; (2) a wholesaler's license; (3) a retailer's license, class A; or (4) a retailer's license, class C/X or class D/X issued for a passenger-carrying marine vessel or vessel line or for a railroad club car or dining car or a railroad company. No licensee may store beverages upon premises outside the District, except that licensed wholesalers permitted by the Board to store beverages outside the District as of January 1, 1986, may continue to do so until July 27, 1988. (Jan. 24, 1934, 48 Stat. 327, ch. 4, § 13; Aug. 24, 1935, 49 Stat. 900, ch. 756, § 8; Dec. 8, 1970, 84 Stat. 1394, Pub. L. 91-535, § 5; 1973 Ed., § 25-114; Oct. 26, 1977, D.C. Law 2-27, § 2, 24 DCR 3720; Mar. 5, 1981, D.C. Law 3-157, § 2(c), 27 DCR 5117; July 26, 1986, D.C. Law 6-130, § 2, 33 DCR 3405; Mar. 7, 1987, D.C. Law 6-217, § 8, 34 DCR 907.)

Cross references. — As to the annual publication of list of expiring licenses, see § 1-261.

Legislative history of Law 2-27. — Law 2-27, the "Variable Licensing Periods Act of 1977," was introduced in Council and assigned Bill No. 2-126, which was referred to the Committee on Public Services and Consumer Affairs. The Bill was adopted on first and second readings on June 28, 1977 and July 12, 1977, respectively. Signed by the Mayor on August 1,

1977, it was assigned Act No. 2-61 and transmitted to both Houses of Congress for its review.

Legislative history of Law 3-157. — See note to § 25-107.

Legislative history of Law 6-130. — Law 6-130, the "Wholesale Liquor Industry Storage Act of 1986," was introduced in Council and assigned Bill No. 6-329, which was referred to the Committee on Consumer and Regulatory

Affairs. The Bill was adopted on first, amended first and second readings on April 15, 1986, April 29, 1986 and May 13, 1986, respectively. Signed by the Mayor on May 29, 1986, it was assigned Act No. 6-168 and transmitted to both Houses of Congress for its review.

Legislative history of Law 6-217. — See note to § 25-103.

History of Alcoholic Beverage Control Board. — See note to § 25-104.

Enforcement of subsection (f) enjoined. — Subsection (f) of this section violates the Commerce Clause, and does not fall within the protections of the 21st Amendment; therefore, enforcement of the subsection is enjoined. *Quality Brands, Inc. v. Barry*, 715 F. Supp. 1138 (D.D.C. 1989).

Finding required for renewal of restaurant's license. — Before the Board can rule

that it may renew a class C liquor license for a restaurant, the Board must make a finding that the restaurant's chief source of revenue is from the sale of meals and not beverages. *Upper Ga. Ave. Planning Comm. v. ABC Bd.*, App. D.C., 500 A.2d 987 (1985).

Application of rulings. — District was collaterally estopped from disputing the application of a previous ruling that regulation requiring any alcoholic beverage by a District wholesale to a District retailer "come to rest" in the District for at least 24 hours prior to sale was unconditional. Additionally, the regulation likely would be found to violate the commerce clause again. *Milton S. Kronheim & Co. v. District of Columbia*, 877 F. Supp. 21 (D.D.C. 1995).

Cited in *Donnelly v. District of Columbia ABC Bd.*, App. D.C., 452 A.2d 364 (1982).

§ 25-115. Same — Application; qualifications; denial; exemptions.

(a)(1) Any individual, partnership, or corporation applying for issuance, transfer, or renewal of a license shall file with the Board an application in the form prescribed by the Mayor. The application shall contain the information set forth in paragraph (2) of this subsection and any additional information the Board may require.

(2) Each application shall contain:

(A) In the case of an individual applicant, the name and address of the individual; in the case of a partnership applicant, the names and addresses of each member of the partnership; and in the case of a corporation applicant, the names and addresses of each of the corporation's principal officers, and its stockholders holding 25% or more of its common stock;

(B) The name and address of the true and actual owner of the establishment for which the license is sought and the property where it is located, except that this requirement shall not apply to applicants for a solicitor's license or a retailer's license, class E;

(C) The class of license sought;

(D) The address of the establishment for which the license is sought;

(E) The proximity of the establishment to the nearest public, private, or parochial elementary, junior high, or high school;

(F) The size and design of the establishment for which the license is sought; and

(G) A detailed description of the nature of the operation proposed, including, but not limited to, the following:

(i) The type of food to be offered, if any;

(ii) The type of entertainment to be offered, if any;

(iii) The goods and services to be offered for sale, in addition to alcoholic beverages, if any; and

(iv) The hours of operation.

(3) Before making a substantial change in the nature of operation of the licensed establishment, a licensee shall file with the Board an amendment to

the information provided on the application pursuant to paragraph (2)(G) of this subsection. If the Board determines that the change is substantial, it shall provide notice of the licensee's amended filing to the same persons and in the same manner required for license renewal applications as set forth in subsection (c)(1) and (2) of this section, and it shall require the licensee to make a showing of appropriateness as set forth in subsection (b) of this section. If the applicant fails to demonstrate that the proposed change in the nature of operation is appropriate for the locality, section, or portion of the District where the establishment is located, the Board shall disapprove the proposed change. Before enforcing this subsection, the Mayor shall promulgate rules, in accordance with § 25-107, setting forth the specific changes in the nature of the operation of a licensed establishment that shall require amendment of a license application in accordance with this subsection.

(b)(1) To qualify for issuance, transfer, or renewal of a license, an applicant shall demonstrate to the satisfaction of the Board that the establishment for which the license is sought is appropriate for the locality, section, or portion of the District where it is to be located. If no objection to the appropriateness of the application is filed, the establishment for which the license is sought shall be presumed to be appropriate for the locality, section, or portion of the District where it is to be located. In determining whether an establishment is appropriate, the Board shall consider all relevant evidence of record, including:

- (A) The effect of the establishment on real property values;
- (B) The effect of the establishment on peace, order, and quiet;
- (C) The effect of the establishment upon residential parking needs and vehicular and pedestrian safety;
- (D) Repealed;
- (E) Repealed;
- (F) Repealed; and

(G) The length of time the establishment has held a license for that location and the licensee's record of compliance with the provisions of this chapter and the rules promulgated under this chapter during that time.

(2) In determining whether an establishment is appropriate for initial issuance of a license or whether the transfer of an existing license to a new location is appropriate, the Board shall consider also the following conditions.

(A) The proximity of the establishment to schools, recreation centers, day care centers, public libraries, or other similar facilities;

(B) In the case of applications for retailer's licenses, class C/N or class D/N, whether the proximity of the establishment to a residence district, as identified in the Zoning Regulations of the District of Columbia and shown in the official atlases of the Zoning Commission for the District of Columbia, would generate a substantial adverse impact on the residents of the residence district; and

(C) Whether issuance of the license would create or contribute to an overconcentration of licensed establishments, likely to adversely affect the locality, section, or portion in which the establishment is located.

(3)(A) The Board shall identify the boundaries of the locality, section, or portion of the District of Columbia to apply in determining the appropriateness

of each application. In general, a locality shall be the immediate neighborhood of the establishment, a section shall be an area larger than the immediate neighborhood, and a portion shall be an area larger than a section. The Board shall determine, on a case-by-case basis, the size of the area relevant for the appropriateness review. In making this determination, the Board shall consider the overall characteristics of the area, including population, density, and general commercial and residential activities.

(B) In submitting evidence of appropriateness, the applicant shall propose the boundaries of the locality, section, or portion to be considered. Any person may submit written objections to the boundaries proposed by the applicant, or may submit a written proposal listing alternative boundaries for consideration by the Board.

(4) The requirements of this subsection shall not apply to applicants for a solicitor's license or for a retailer's license, class E, class F, or class G.

(5) Class C/N licensed establishments to be located in a nightclub district shall be presumed to be appropriate for such location.

(c)(1) Prior to acting on applications for issuance or renewal of retailer's licenses, class A, B, C/R, C/T, C/N, C/H, C/X, D/R, D/T, D/N, D/H, D/X, and consumption licenses for clubs, or for transfer of a license of any of these classes to a different location, the Board, at least 45 calendar days prior to a hearing, shall give notice of an application to the Council, the Board of Education of the District of Columbia ("Board of Education"), and the Advisory Neighborhood Commission representing the area in which the establishment is located, except that in the case of Class C/N license applicants to a nightclub district, the Board shall give notice at least 20 calendar days prior to the hearing. The notices shall contain the name of the applicant, the street address of the establishment for which the license is sought, the class of license sought, and a description of the nature of the operation the applicant has proposed. The notice to the Board of Education shall state the proximity of the establishment to the nearest public school of the District. The notices shall state that persons objecting to approval of the application are entitled to be heard before the granting of the license, and shall name the time and place of the hearing.

(1A) In the case of an Advisory Neighborhood Commission ("Commission"), the Board shall give notice by first-class mail, posted not less than 5 calendar days prior to the first day of the 45-calendar-day notice period, and addressed to the Commission office, with sufficient copies of the notice for distribution to each Commission member, the Chairperson of the Commission at his or her home address of record, and the Commission member in whose single-member district the establishment is located at his or her home address of record. In addition, the Board shall provide to each Commission office, on a quarterly basis, a printed list of all ABC licenses due to expire in the ensuing 6 months.

(2) The applicant shall post 2 notices of the application in conspicuous places on the outside of the premises for 45 days prior to a hearing, except that in the case of establishments to be located in a nightclub district, the Board shall post the notices for at least 20 calendar days prior to the hearing. The

notices shall provide the same information required by paragraph (1) of this subsection. Any person wilfully removing, obliterating, or defacing the notices shall be guilty of a violation of this chapter. An applicant who fails to maintain the posted notices continuously for the 45-day or 20-day period shall be guilty of a violation of this chapter.

(3) In the case of applications for new licenses in any of the classes listed in paragraph (1) of this subsection, the Board additionally shall give notice by advertisements published once a week during the 45-day or 20-day period prior to a hearing in a newspaper of general circulation published in the District. The applicant shall pay the fee for the advertisements at the time of application. The advertisements shall contain the same information required by paragraph (1) of this subsection.

(4) Any person objecting to approval of an application shall notify the Board in writing of his or her intention to object and the grounds for the objection at least 15 calendar days prior to the date of the hearing.

(5) No application shall be approved until objectors have been afforded an opportunity to be heard in accordance with rules and procedures adopted by the Board.

(d) Notwithstanding any other provision of this chapter, the Board shall deny a license if the evidence reasonably shows that:

(1) The establishment for which the license is sought is in violation of 1 or more of the Construction Codes for the District of Columbia, or any other law or rule of the District intended to protect public safety;

(2) The applicant has knowingly permitted, at the place for which the license is sought, the illegal sale, or negotiations for sale, or the use, of any controlled substance in violation of the District of Columbia Uniform Controlled Substances Act of 1981 ("CSA"), or the possession or sale, or negotiations for sale, of drug paraphernalia in violation of the CSA or Chapter 6 of Title 33. Successive sales, or negotiations for sale, over a continuous period of time amounting to a recognizable pattern of activity shall be deemed evidence of knowing permission; or

(3) The applicant has permitted, at the place for which the license is sought, conduct in violation of § 504 of the Alcoholic Beverages and Food Regulations of the District of Columbia (23 DCMR 504).

(e)(1) Notwithstanding any other provision of this chapter, the Board shall deny an application for a new license, a change of license class, or transfer of a license to a different location upon receiving valid written objections from the majority of registered voters residing within a 600-foot radius of the establishment for which the license is sought, except that any person who holds a license issued pursuant to this chapter shall be ineligible to object and shall not be counted in calculating a majority. When any part of a parcel or lot falls within the 600-foot radius, the registered voters residing on it shall be entitled to object. A majority shall be more than half of the total number of registered voters within the radius, with each person entitled to 1 vote of objection. For the purposes of this subsection, a "registered voter" shall mean any person who was registered to vote in the District on the date of the license application that is the subject of the objection, and who is listed on the voter registration rolls as a resident of an address within the 600-foot radius.

(2) Written objections shall be submitted on petition forms prescribed by the Board by rule in accordance with the provisions of § 25-107(e) and shall be signed by the objectors.

(3) To initiate the petition process, any eligible objector shall submit to the Board a petition proposal and a statement of no more than 100 words identifying the basis for the objection. The eligible objector shall at the same time submit the petition proposal and the statement to the Advisory Neighborhood Commission ("ANC") representing the area in which the applicant requests the license. To qualify as valid a petition proposal shall identify as the basis for the objection 1 or more of the conditions set forth in subsection (b)(1) and (b)(2) of this section. Upon receipt of the petition proposal, the ANC shall within 45 calendar days vote upon the merit of the objection. The ANC shall inform the Board and the member of the Council representing the ward in which the ANC is located of the results of the vote, except in the case of an objection to an application for an establishment in a nightclub district, an ANC shall have 20 calendar days to vote. Within 10 business days from the date of receiving the proposed statement, the Board shall determine whether the proposed statement is nondiscriminatory in effect or intent according to the standards established by Chapter 25 of Title 1, and whether it complies with the requirements of this chapter, rules issued pursuant to this chapter, and any other applicable laws and rules of the District. The Board may revise the proposed statement, subject to the consent of the objector, or may request the objector to submit a revised statement. Upon determining that the statement complies with the requirements of this paragraph, the Board shall approve the statement and shall order that the statement and information as to whether the ANC voted in support of, in opposition to, or took no position on the petition proposal be printed on all petition forms circulated to obtain the signatures of eligible objectors. Any petition form that does not contain the required statement, as approved by the Board, shall be inadmissible, and the persons signing an inadmissible form shall not be counted as objecting to the license application.

(4) Within 30 calendar days or 15 days in the case of applicants to the nightclub zone, from the date of approving the petition statement, the Board shall:

(A) Notify the applicant of the initiation of the petition process and provide the applicant a copy of the approved petition statement;

(B) Provide the applicant and the person initiating the petition process with a map and written description of the boundaries of the 600-foot radius surrounding the establishment whose license application is the subject of the petition;

(C) Provide the applicant and the person initiating the petition process with a list of the names and addresses of the registered voters residing within the 600-foot radius; and

(D) Provide written notice of the petition process by first-class mail to each registered voter residing within the 600-foot radius, stating the identity of the applicant, the street address of the applicant's establishment, the class of license sought, the type of establishment and nature of operation proposed,

the name and address of the person initiating the petition process, and the content of the petition statement approved by the Board.

(5) The time period for collecting signatures on a petition shall be 30 calendar days from a date 3 days subsequent to the date the Board completes the notifications required by paragraph (4) of this subsection.

(6) Upon receiving completed petitions, the Board shall establish a period of 15 calendar days during which the applicant or any other person may challenge the validity of the signatures. The Board shall provide the applicant with timely notification of the challenge period.

(7) Within 15 days from the date of expiration of the challenge period, the Board shall determine whether the petitions meet the requirements of this subsection and, if so, shall deny the license application.

(7A) If the Board determines at any time that proponents, circulators, or signers of a petition acted due to motives that are inconsistent with the purposes set forth in paragraph (3) of this subsection or any other provision of law, the Board shall declare the petition null and void.

(8) The provisions of this subsection shall apply in the following manner to the initial applications submitted following March 7, 1987, by the holders of retailer's licenses, class C and class D, that were in effect on September 30, 1986:

(A) The holder of a retailer's license, class C for a restaurant who applies for a retailer's license, class C/R for the same establishment shall be treated as a renewal applicant, and shall not be subject to the petition process.

(B) The holder of a retailer's license, class C for a hotel who applies for a retailer's license, class C/H for the same establishment shall be treated as a renewal applicant and shall not be subject to the petition process.

(C) The holder of a retailer's license, class D for a restaurant who applies for a retailer's license, class D/R for a restaurant for the same establishment shall be treated as a renewal applicant, and shall not be subject to the petition process.

(D) The holder of a retailer's license, class D for a tavern who applies for a retailer's license, class D/T for the same establishment shall be treated as a renewal applicant, and shall not be subject to the petition process.

(E) The holder of a retailer's license, class C for a restaurant who applies for a retailer's license, class C/T, C/N, D/T, or D/N shall be treated as a new applicant subject to the petition process.

(F) The holder of a retailer's license, class D for a tavern who applies for a retailer's license, class C/R, C/T, C/N, D/R, or D/N shall be treated as a new applicant subject to the petition process.

(9)(A) In the case of an applicant identified in paragraph (8)(E) or (F) of this subsection, there shall be a presumption that a majority of the registered voters residing within 600-foot radius of the establishment for which the license is sought do not object to the license and the Board shall deny a petition proposal if:

(i) The applicant has been licensed and in operation at that location for 5 years or longer;

(ii) The applicant has not illegally altered the nature of operation during the period of operation;

(iii) The applicant does not have a record of consistent and repeated violations of the laws or regulations of the District;

(iv) The establishment has not been the subject of repeated citations by any agency of the District; and

(v) There was no meritorious challenge of a license application for the establishment pending before the Board on November 7, 1986.

(B) Before denying a petition proposal pursuant to this paragraph, the Board shall provide the ANC that considered the petition proposal and the person initiating the petition process an opportunity to submit evidence regarding the 5 conditions listed in subparagraph (A) of this paragraph and shall not deny the petition proposal if there is substantial evidence to show that any 1 of the 5 conditions is not true.

(10) The provisions of this subsection shall not apply to applications for a solicitor's license; for a retailer's license, class E, class F, or class G; for a retailer's license, class C/X for a club; or for a consumption license for a club.

(11) In the case of property within the 600-foot radius that is owned by the District, the Mayor may object on behalf of the District. In the case of property within the 600-foot radius that is owned by the United States, the designated custodian of the property may object on behalf of the United States.

(f) In establishing any geographic boundaries required by this chapter, the Board shall measure the specified distance in an arc from each corner of the lot or parcel on which the licensed establishment is located, connecting the arcs by tangent lines.

(g)(1) Before issuing, transferring, or renewing a license, the Board shall determine that:

(A) The individual applicant, each member of an applicant partnership, or each of the principal officers, directors, and stockholders of an applicant corporation is of good moral character and generally fit for the responsibilities of licensure, except that no stockholder of an applicant corporation as of March 7, 1987, shall be disqualified by virtue of conviction of a felony or misdemeanor prior to March 7, 1987;

(B) The individual applicant, or each member of an applicant partnership, or each of the principal officers, directors, and stockholders of an applicant corporation is at least 21 years old, has not been convicted of any felony in the 10 years prior to filing the application, and has not been convicted of any misdemeanor bearing on fitness for licensure in the 5 years prior to filing the application, except that no stockholder of an applicant corporation as of March 7, 1987, shall be disqualified by virtue of conviction of a felony or misdemeanor prior to March 7, 1987;

(C) Except in the case of an application for a solicitor's license, the applicant is the true and actual owner of the business establishment for which the license is sought, and that he or she intends to carry on the business for himself or herself and not as the agent of any other individual, partnership, association, or corporation not identified in the application, and that the licensed establishment will be managed by the applicant in person or by a manager approved by the Board; and

(D) The applicant has complied with all other requirements of this chapter and rules issued pursuant to this chapter.

(2) In the case of an application for a wholesaler's license or for a retailer's license of any class, except class E, F, or G, the Board shall further determine prior to issuing, transferring, or renewing a license that:

(A) No manufacturer of alcoholic beverages, no wholesaler of alcoholic beverages other than the applicant, no stockholder holding 25% or more of the common stock of a manufacturer or wholesaler, and no officer of a manufacturer or wholesaler corporation has such a substantial interest, direct or indirect, in the business for which the license is sought or in the premises where it is to be operated that the applicant, in the judgment of the Board, would be influenced to purchase alcoholic beverages from the manufacturer or wholesaler; and

(B) The business for which the license is sought has not been and will not be conducted with any money, equipment, furniture, fixtures, or property rented from or loaned or given by any manufacturer, any wholesaler other than the applicant, any stockholder holding 25% or more of the common stock of a manufacturer or wholesaler, or any officer of a manufacturer or wholesaler corporation, or sold by any manufacturer, wholesaler, or officer to the applicant for less than the fair market value or upon a conditional sale agreement or chattel trust.

(3) In the case of an application for renewal of a retailer's license, class C/R, C/H, D/R, or D/H, the Board shall further determine prior to renewing a license that the sale of food has accounted for at least 45% of gross annual receipts from the operation of the restaurant or of the dining room of the hotel during the current license period. In the case of an application for a new license, transfer of a license to a different location, or transfer to new ownership of a license for an establishment not in operation at the time of the application, the Board shall determine prior to approving the application that the applicant has presented evidence establishing a reasonable probability that the sale of food will account for at least 45% of gross annual receipts from the operation of the restaurant or of the dining room of the hotel during each year of the license period. In the case of an application to transfer to new ownership the license of an establishment that is in operation at the time of the application and has been in continuous operation since its license was most recently issued or renewed, the determination required by this paragraph shall not apply.

(h)(1) Notwithstanding the provisions of subsection (g)(3) of this section, the holder of a retailer's license, class C or class D, issued for a restaurant or a tavern prior to March 7, 1987, and in effect on September 30, 1986, shall be exempt from the requirement that the sale of food shall account for at least 45% of gross annual receipts if:

(A) The licensee applies for a retailer's license, class C/R or D/R within 30 days after the effective date of rules issued pursuant to § 25-107(e)(1) to implement the 1986 act;

(B) The licensee submits financial records, in the manner prescribed by the Board, to show the percentage of gross annual receipts generated by the sale of food during the period of the license in effect on September 30, 1986; and

(C) The licensee submits a statement of intention to operate the licensed establishment as a bona fide restaurant, and a description of plans to achieve 45% of gross annual receipts from the sale of food within 3 years.

(2) If the applicant complies with the requirements of paragraph (1) of this subsection, and otherwise qualifies for licensure, the Board shall issue the applicant a retailer's license, class C/R or D/R for a term of 1 year.

(3) The Board shall review the license annually and may extend the exemption for 2 succeeding 1-year terms if it determines that the licensee has sufficiently increased the percentage of gross annual receipts generated by the sale of food. The Board shall base its determination on an examination of the quarterly reports filed by the licensee pursuant to § 25-111(a)(13)(D) and any other books and records kept by the licensee that the Board considers necessary.

(4) Whenever a licensee who was the holder of a retailer's license, class C, that was in effect on September 30, 1986, and who is issued a retailer's license, class C/R or D/R, pursuant to this subsection, has not achieved 45% of gross annual receipts from the sale of food at the end of the 3-year period of the exemption, the licensee may apply for a retailer's license, class C/T, C/N, D/T, or D/N. If the application becomes the subject of the petition process authorized by subsection (e) of this section, the Board shall require the signatures of 60% of the eligible objectors within the 600-foot radius in order to deny the application on the basis of the petition process.

(i) Whenever an application for license renewal is made the subject of contested proceedings, and the license expires prior to the Board's decision on the renewal application, the Board may enter an order extending the expiration date during the pendency of proceedings on the renewal application. The Board may also enter an order extending the expiration date of any license that expired on September 30, 1986, for no more than 120 days after the Mayor has issued any necessary final rules pursuant to § 25-107(e)(1).

(j)(1) A separate application shall be filed for each establishment for which a license is sought, except that a railroad company may file 1 application for all of its dining cars and club cars, and a passenger-carrying marine vessel line may file 1 application for all of its passenger-carrying marine vessels and dockside waiting areas.

(2) Each applicant shall pay the required license fee to the D.C. Treasurer, and the applicant's duplicate receipt shall accompany the application for license. If the license is denied, the fee shall be returned.

(3) Each application shall be verified by the affidavit of the applicant individual, by all of the members of an applicant partnership, or by the president or vice-president of an applicant corporation. Any person who knowingly makes a false statement on an application, or in any accompanying statement under oath that the Mayor or the Board may require, shall be deemed guilty of the offense of making false statements. The making of a false statement, whether made with or without the knowledge or consent of the applicant, shall, in the discretion of the Board, constitute sufficient cause for denial of the application or revocation of the license.

(k) The number of C/N, C/T, D/N, or D/T license holders within the Georgetown historic district shall not exceed 6, and no new license class C/N,

C/T, D/N, or D/T shall be issued, and no existing license class C/N, C/T, D/N, or D/T shall be transferred to any other person or to any other location within the Georgetown historic district, except when the number of such licensed establishments in the Georgetown historic district is below 6. Nothing in this subsection shall prevent the Board from allowing a licensee to transfer the license to a location outside the Georgetown historic district, provided the transfer is otherwise in accordance with this chapter and rules.

(l) Any holder of a C/N, C/T, or D/N license within the Georgetown historic district as of May 24, 1994, may apply for a conversion to a C/R or D/R license for its present location, present owner, and for the duration of its present license. Such application shall not require a public hearing or the assessment of any fees for such a change by the ABC Board. (Jan. 24, 1934, 48 Stat. 327, ch. 4, § 14; Aug. 25, 1937, 50 Stat. 802, 803, ch. 766, §§ 1, 2; June 15, 1938, 52 Stat. 691, ch. 396, § 3; June 29, 1953, 67 Stat. 103, ch. 159, § 404(e), (f); Aug. 2, 1968, 82 Stat. 616, Pub. L. 90-450, title IV, § 404; 1973 Ed., § 25-115; Mar. 5, 1981, D.C. Law 3-146, § 4, 27 DCR 4753; Sept. 29, 1982, D.C. Law 4-157, §§ 8, 15, 29 DCR 3617; Mar. 8, 1984, D.C. Law 5-51, § 2(b)(4), (c), 30 DCR 5927; June 29, 1984, D.C. Law 5-97, § 2, 31 DCR 2556; Mar. 7, 1987, D.C. Law 6-217, § 9, 34 DCR 907; June 5, 1987, D.C. Law 7-7, § 2, 34 DCR 2640; Oct. 3, 1992, D.C. Law 9-174, § 2(b), (c), 39 DCR 5859; May 24, 1994, D.C. Law 10-122, § 2(f), 41 DCR 1658.)

Cross references. — As to notice of applications for licenses for advisory neighborhood commissions, see § 1-261.

As to restrictions on operation of retail service stations, see § 10-212.

As to forbidden business interest, see §§ 25-105, 25-113, 25-119, and 25-120.

As to rules and regulations, see § 25-107.

Section references. — This section is referred to in § 25-115.1.

Effect of amendments. — D.C. Law 10-122 repealed (b)(1)(D), (E), and (F); added (b)(5); added the exception at the end of the first sentence in (c)(1); added the exception at the end of the first sentence in (c)(2); inserted “or 20-day” in (c)(3); added the exception at the end of the fourth sentence in (e)(3); inserted “or 15 days in the case of applicants to the nightclub zone” in the introductory language of (e)(4); and added (k) and (l).

Legislative history of Law 3-146. — Law 3-146, the “Alcoholic Beverage Control Board Rules of Procedure Amendments of 1980,” was introduced in Council and assigned Bill No. 3-165, which was referred to the Committee on Public Services and Consumer Affairs. The Bill was adopted on first, amended first and second readings on July 29, 1980, September 16, 1980 and September 30, 1980, respectively. Signed by the Mayor on October 21, 1980, it was assigned Act No. 3-267 and transmitted to both Houses of Congress for its review.

Legislative history of Law 4-157. — See note to § 25-103.

Legislative history of Law 5-51. — See note to § 25-104.

Legislative history of Law 5-97. — Law 5-97, the “Prohibition on the Sale of Alcoholic Beverages at Gasoline Stations Act of 1984,” was introduced in Council and assigned Bill No. 5-70, which was referred to the Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and second readings on April 10, 1984, and April 30, 1984, respectively. Signed by the Mayor on May 9, 1984, it was assigned Act No. 5-138 and transmitted to both Houses of Congress for its review.

Legislative history of Law 6-217. — See note to § 25-103.

Legislative history of Law 7-7. — Law 7-7, the “District of Columbia Alcoholic Beverage Control Act Temporary Amendment Act of 1987,” was introduced in Council and assigned Bill No. 7-142. The Bill was adopted on first and second readings on March 17, 1987, and March 31, 1987, respectively. Signed by the Mayor on April 15, 1987, it was assigned Act No. 7-17 and transmitted to both Houses of Congress for its review.

Legislative history of Law 9-174. — See note to § 25-115.1.

Legislative history of Law 10-122. — See note to § 25-130.1.

References in text. — The “District of Columbia Uniform Controlled Substances Act of 1981,” referred to in paragraph (d)(2), is D.C. Law 4-29.

Former paragraph (a)(2) (now see para-

graph (g)) did not proscribe all illegal conduct; it covered only misdemeanor convictions under the National Prohibition Act within the previous 5 years, and any felony convictions within the previous 10 years. *Haight v. District of Columbia ABC Bd.*, App. D.C., 439 A.2d 487 (1981).

Statutory standard for issuance of ABC license in former paragraph (a)(6) (now see paragraph (b)(1)) was not unconstitutionally vague. *LCP, Inc. v. District of Columbia ABC Bd.*, App. D.C., 499 A.2d 897 (1985).

Former paragraph (c) (now see paragraph (e)) did not apply where there was a class A license in existence at the location and in effect on the date an application for transfer was filed. *Donnelly v. District of Columbia ABC Bd.*, App. D.C., 452 A.2d 364 (1982).

Board must allow opportunity to applicants. — In reviewing application for a transfer of license, the Board must allow each competing applicant an opportunity to show that his application should be favored so that specific standards, and not unbridled Board discretion, will control. *Pollack v. Simonson*, 350 F.2d 740 (D.C. Cir. 1965).

Board has authority to limit class “C” licenses notwithstanding that the action might limit a given area to existing licenses as long as it exercises bona fide judgment. *Palace Restaurant, Inc. v. ABC Bd.*, App. D.C., 271 A.2d 561 (1970).

Applicant’s fitness required. — Under paragraph (a)(1), an applicant must satisfy the licensing authorities as to his fitness. *Citizens Ass’n v. District of Columbia ABC Bd.*, App. D.C., 288 A.2d 666 (1972).

Absence of information of character does not preclude Board finding. — Where the applicant’s president did not reveal in the application filed with the Board for a license that he had been indicted and that he had been charged with the crime of being present in an illegal establishment, but the record reflected that both charges had been nolle prossed, given the particular nature and subsequent disposition of those charges and the ability of the Board to observe the witness’ demeanor in considering the credibility of his explanation for not recognizing those charges in completing the application form, the Board’s conclusion that the applicant’s president was “of good moral character and generally fit for the trust” could not be said to be clearly wrong or lacking “substantial, probative evidence of record.” *Citizens Ass’n v. District of Columbia ABC Bd.*, App. D.C., 410 A.2d 197 (1979).

Neighborhood opinion not only factor Board must consider. — While neighborhood opinion is one important factor for the Board to consider, the clear language of this section requires the Board to weigh other factors as

well, and places the primary responsibility for decisions with the Board. *Donnelly v. District of Columbia ABC Bd.*, App. D.C., 452 A.2d 364 (1982).

Only evidence considered relevant to applicant’s “moral character” or fitness is evidence of illegal activity. *Haight v. District of Columbia ABC Bd.*, App. D.C., 439 A.2d 487 (1981).

Investigative reports to be placed in record. — If investigative reports are officially noticed or relied on in consideration of application, they should be placed in the record and made available to all parties. *Citizens Ass’n v. District of Columbia ABC Bd.*, App. D.C., 287 A.2d 87 (1972).

Inspection of premises. — The Board may conduct an inspection of the area and premises involved in a license application, but it should be done before the hearing terminates. *Citizens Ass’n v. District of Columbia ABC Bd.*, App. D.C., 288 A.2d 666 (1972).

Compliance with plumbing code does not undercut Board finding of inadequacy. — That an establishment is in compliance with the plumbing code does not undercut a finding by the Board that plumbing facilities were inadequate to render the establishment “appropriate” for reissuance of an ABC license. *LCP, Inc. v. District of Columbia ABC Bd.*, App. D.C., 499 A.2d 897 (1985).

Appropriateness of location. — This section requires that the Board issue a license only if it has found that the proposed location is an appropriate one for a license. *Spevak v. District of Columbia ABC Bd.*, App. D.C., 407 A.2d 549 (1979).

Board’s reliance on instances of disorderly conduct occurring outside establishment is proper consideration in concluding that the establishment was not an “appropriate” place for reissuance of its liquor license under former paragraph (a)(6) of this section (now see paragraph (b)(1)). *LCP, Inc. v. District of Columbia ABC Bd.*, App. D.C., 499 A.2d 897 (1985).

Board cannot ignore violations of its regulations but must weigh them in the balance along with all the other factors listed in subsections (b) and (g) and in any pertinent regulations. *North Lincoln Park Neighborhood Ass’n v. ABC Bd.*, App. D.C., 666 A.2d 63 (1995).

In class B license application proceeding, Board shall hear all persons residing within and without neighborhood who desire to be heard, and the provisions which give a majority of property owners within a 600-foot radius of the applicant’s premises a veto power over an application do not apply. *Gerber v. District of Columbia ABC Bd.*, App. D.C., 499 A.2d 1193 (1985).

Majority of property owners within 600-foot radius objecting. — It was arbitrary for the Board not to count property owners as objecting simply because they had inadvertently signed a form provided for objection by “residents and/or owners” under former paragraph (a)(6) of this section (now see paragraph (b)(1)) rather than the form for objection by “owners of real property” under former subsection (c) of this section (now see subsection (e)). *MacArthur Liquors, Inc. v. Palisades Citizens Ass’n*, 265 F.2d 372 (D.C. Cir. 1959).

Applicant had notice of criterion applied to determine appropriateness. — Where applicant for a license for a proposed combination gasoline station-liquor store knew that the creation of a “drink-and-drive” atmosphere would be one of the Board’s concerns and where testimony opposing the license on this ground was offered and received at the hearing, the applicant could not argue that it was without notice that a “drink-and-drive” criterion would be applied pursuant to the Board’s authority under this section to determine appropriateness based on the character of the premises. *Jameson’s Liquors, Inc. v. District of Columbia ABC Bd.*, App. D.C., 384 A.2d 412 (1978).

But Board’s conclusion of inappropriateness not supported by proper evidence. — The Board’s conclusion that the close business relationship and physical proximity of a gas station and an adjacent liquor store and the existing customer identification of the gas station business with the structure housing the liquor business would create a “drink-and-drive” atmosphere rendering the character of the premises inappropriate for a retail liquor store was not supported by substantial, rationally connected evidence. *Jameson’s Liquors, Inc. v. District of Columbia ABC Bd.*, App. D.C., 384 A.2d 412 (1978).

Arbitrary rejection. — Rejection by the Board of an application for a license on the ground that the area was adequately serviced was arbitrary and capricious in the absence of any evidence on the point. *Clore Restaurant, Inc. v. Payne*, 72 F. Supp. 677 (D.D.C. 1947).

Fact that the Board granted a liquor license to a restaurant adjacent to a larger proposed restaurant did not render the denial of a license to the latter arbitrary since qualifications of the applicants and character of the restaurants were different. *Sophia’s, Inc. v. ABC Bd.*, App. D.C., 268 A.2d 799 (1970).

Board member’s dual involvement in license application. — Fact that a member of the Board was involved in both the investigation and determination of the case involving application for a license is not sufficient to overcome presumption of fairness and is not enough to set aside the Board’s grant of a

license. *Citizens Ass’n v. District of Columbia ABC Bd.*, App. D.C., 359 A.2d 295 (1976).

Grounds for rejection of petition. — Notwithstanding the absence of explicit language authorizing dismissal of a petition, there is an inference that the Board may (and indeed must) reject a petition which is discriminatory or unlawful. *Coumaris v. District of Columbia ABC Bd.*, App. D.C., 660 A.2d 896 (1995).

Board’s rejection of a petition upon the ground that the supporting statements contained false representations of facts exceeded the Board’s authority. *Coumaris v. District of Columbia ABC Bd.*, App. D.C., 660 A.2d 896 (1995).

Renewal of license includes renewal of agreement in Board regulations. — Regulations make a voluntary agreement a part of the license, and any renewal of the license will therefore include a renewal of the voluntary agreement as well, unless the agreement is modified by the parties or by the Alcohol Beverage Control Board. *North Lincoln Park Neighborhood Ass’n v. ABC Bd.*, App. D.C., 666 A.2d 63 (1995).

Scope of judicial review. — Court’s review of decision of the Board on a license application is limited to determination of whether its decision is supported by substantial evidence. *Vestry of Grace Parish v. District of Columbia ABC Bd.*, App. D.C., 366 A.2d 1110 (1976).

In reviewing decision of the Alcoholic Beverage Control Board, the court’s role is not to substitute its own judgment for that of the Board, but rather to determine if the Board has complied with the Code provisions pertaining to alcoholic beverages, and the requirements of the District of Columbia Administrative Procedure Act. *Le Jimmy, Inc. v. District of Columbia ABC Bd.*, App. D.C., 433 A.2d 1090 (1981).

A reviewing court must accord considerable respect not only to the Board’s evidentiary rulings themselves, but also to the Board’s interpretation of the regulations that govern its evidentiary standards, as well as the Board’s interpretation of the underlying statutory requirements for obtaining a liquor license. *Haight v. District of Columbia ABC Bd.*, App. D.C., 439 A.2d 487 (1981).

The Court of Appeals must uphold the Board’s decision to grant or deny a license application so long as the decision is supported by substantial evidence, even though there may also be substantial evidence to support a contrary decision. *Upper Ga. Ave. Planning Comm. v. ABC Bd.*, App. D.C., 500 A.2d 987 (1985).

Standing dependent upon nexus. — An association’s standing to obtain judicial review of a claim that the Board improperly reissued retail liquor license depends upon the existence of a logical and direct nexus between the association’s interest and the adverse action of the opposing parties. *Citizens Ass’n v. Simonson*,

403 F.2d 175 (D.C. Cir. 1968), cert. denied, 394 U.S. 975, 89 S. Ct. 1454, 22 L. Ed. 2d 755 (1969).

Standing to assert violation of regulations. — Petitioners, holders of liquor licenses in the same neighborhood as intervenor, have standing to assert the violation of a regulation prohibiting the issuance of a liquor license to an establishment located within 400 feet of another licensee. *Brentwood Liquors, Inc. v. District of Columbia ABC Bd.*, App. D.C., 661 A.2d 652 (1995).

Congressional directive to consider neighborhood. — Congress recognized that the operation of liquor establishments would trouble neighbors when it directed the Board to consider the wishes of those persons in issuing liquor licenses. *Citizens Ass'n v. Simonson*, 403 F.2d 175 (D.C. Cir. 1968), cert. denied, 394 U.S. 975, 89 S. Ct. 1454, 22 L. Ed. 2d 755 (1969).

Right of review in a liquor license case is not restricted to store owners immediately adjacent to the licensed premises nor to unsuccessful applicants, and property owners who at the hearing had presented the “wishes of the neighborhood” were entitled to seek judicial review. *Palisades Citizens Ass'n v. Weakly*, 166 F. Supp. 591 (D.D.C. 1958), rev'd on other grounds sub nom. *MacArthur Liquors, Inc. v. Palisades Citizens Ass'n*, 265 F.2d 372 (D.C. Cir. 1959).

Remand for a new hearing makes appropriate the notice requirements of a new hearing, rather than the notice requirements of a continuation of an existing hearing. *Kopff v. District of Columbia ABC Bd.*, App. D.C., 413 A.2d 152 (1980).

Findings of fact required for review. — Where the findings of fact were so woefully inadequate that the court was frustrated in any attempt at meaningful review, the court remanded the case to the Board for the preparation of findings of fact and conclusions of law. *Citizens Ass'n v. District of Columbia ABC Bd.*, App. D.C., 316 A.2d 865 (1974).

Scope of review where case involves transfer of license. — Where a case concerns an application for transfer of a license rather than initial granting of a license, a reviewing court must presume that the matter of moral character was determined by the Board when the original license was issued. *Donnelly v. District of Columbia ABC Bd.*, App. D.C., 452 A.2d 364 (1982).

Consideration of Advisory Neighborhood Commission's recommendations. — The Board must carefully consider an Advisory Neighborhood Commission's recommendations concerning renewal of a liquor license; so long as the Board makes explicit reference to each ANC issue and concern as such, as well as specific findings and conclusions with respect to each, it meets the requirements of § 1-261(d); it is not obliged to follow the ANC's recommendations or adopt its views. *Upper Ga. Ave. Planning Comm. v. ABC Bd.*, App. D.C., 500 A.2d 987 (1985).

Board may consider effect on parking problems and traffic patterns. — The Board is permitted to consider the effect a prospective licensee will have on parking problems and traffic patterns, but petitioner is not required to prove there is no parking problem in order to qualify for a license. *Le Jimmy, Inc. v. District of Columbia ABC Bd.*, App. D.C., 433 A.2d 1090 (1981).

Insufficient basis for Board's deviation from prior construction of regulation. — Alcoholic Beverage Control Board failed to provide a reasoned basis for deviating from its past construction of a regulation requiring it to measure “the shortest distance” between establishments in applying the 400 foot rule. *Brentwood Liquors, Inc. v. District of Columbia ABC Bd.*, App. D.C., 661 A.2d 652 (1995).

Cited in *Clark's Liquors, Inc. v. ABC Bd.*, App. D.C., 274 A.2d 414 (1971); *Byrd v. District of Columbia ABC Bd.*, App. D.C., 289 A.2d 877, cert. denied, 409 U.S. 1075, 93 S. Ct. 677, 34 L. Ed. 2d 663 (1972); *Schiffmann v. District of Columbia ABC Bd.*, App. D.C., 302 A.2d 235 (1973); *Citizens Ass'n v. District of Columbia ABC Bd.*, App. D.C., 305 A.2d 861 (1973); *Citizens Ass'n v. District of Columbia ABC Bd.*, App. D.C., 323 A.2d 715 (1974); *Dupont Circle Citizens Ass'n v. District of Columbia Bd. of Zoning Adjustment*, App. D.C., 403 A.2d 314 (1979); *D.T. Corp. v. District of Columbia ABC Bd.*, App. D.C., 407 A.2d 707 (1979); *Citizens Ass'n v. District of Columbia ABC Bd.*, App. D.C., 410 A.2d 197 (1979); *Foggy Bottom Ass'n v. District of Columbia ABC Bd.*, App. D.C., 445 A.2d 643 (1982); *Muir v. District of Columbia ABC Bd.*, App. D.C., 450 A.2d 412 (1982); *Washington Press Club v. District of Columbia ABC Bd.*, App. D.C., 476 A.2d 1107 (1984); *K.G.S., Inc. v. District of Columbia ABC Bd.*, App. D.C., 531 A.2d 1001 (1987).

§ 25-115.1. Same — Influencing application process; penalty.

It shall be unlawful for any person to provide, offer to provide, request, or receive anything of value for the personal use, enjoyment, or profit of any individual in exchange for any individual's promise not to exercise the rights

provided by § 25-115(b) and (e) to object to or petition against a license application. Any person who violates the provisions of this section is guilty of a criminal misdemeanor, and, upon conviction, shall be imprisoned for not more than 90 days, or fined not more than \$300, or both. (Jan. 24, 1934, ch. 4, § 14a, as added Oct. 3, 1992, D.C. Law 9-174, § 2(d), 39 DCR 5859.)

Legislative history of Law 9-174. — Law 9-174, the “Alcoholic Beverage Control Amendment Act of 1992,” was introduced in Council and assigned Bill No. 9-125, which was referred to the Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and

second readings on June 2, 1992, and July 7, 1992, respectively. Signed by the Mayor on July 27, 1992, it was assigned Act No. 9-280 and transmitted to both Houses of Congress for its review. D.C. Law 9-174 became effective on October 3, 1992.

§ 25-116. Same — Issuance in certain districts restricted.

(a) No retailer’s licenses except class B or E shall be issued for any business conducted in a residential-use district as defined in the zoning regulations and shown in the official atlases of the Zoning Commission, except for a restaurant or tavern conducted in a hotel or apartment house, and then only when the entrance to such restaurant or tavern is entirely inside the hotel or apartment house, and no sign or display is visible from the outside of the building. The holder of a club license in effect prior to May 24, 1994, shall be permitted to renew the license or transfer it to a new owner, provided that the license shall not be transferred to a new location within a residential district.

(b) No wholesaler’s license shall be issued for any establishment conducted in such residential-use district and no manufacturer’s license shall be issued for any establishment conducted in a residential or first commercial-use district as defined in the zoning regulations and shown in the official atlases of the Zoning Commission. Nothing herein contained shall be construed as permitting the establishment of a bottling works in violation of said zoning regulations.

(c) The provisions of subsection (a) of this section shall not apply in any case where an application is made for the issuance or transfer of a retailer’s license for a place of business conducted in a residential-use district as defined in the zoning regulations and shown in the official atlases of the Zoning Commission if the zoning of such place of business was changed from a less restricted use to such residential use during a period when a license of the same class for which application is made was in effect at such place of business; provided, that a license of the same class at such place of business is in effect on the date the application for the new license, or transfer, is filed.

(d) The provisions of subsection (b) of this section shall not apply in any case where an application is made for the issuance or transfer of a wholesaler’s or manufacturer’s license for a place of business conducted in a residential- or first commercial-use district as defined in the zoning regulations and shown in the official atlases of the Zoning Commission if the zoning of such place of business was changed from a less restricted use to such residential or first commercial-use during a period when a license of the same class for which application is made was in effect at such place of business; provided, that a license of the same class at such place of business is in effect on the date the application for the new license, or transfer, is filed.

(e) Nothing contained in this section shall be construed as entitling a licensee to any preferential treatment or be construed as making inapplicable any provision in any other section of this chapter, in any case where an application is made pursuant to this section for the issuance or transfer of a retailer's license for a place of business conducted in a residential-use district, or for the issuance or transfer of a wholesaler's or manufacturer's license for a place of business conducted in a residential or first commercial-use district, as such districts are defined in the zoning regulations and shown in the official atlases of the Zoning Commission, and the applicant for the issuance or transfer of any of the said licenses is the holder of a similar license for any of the said places of business in effect on the date the application for the new license, or transfer, is filed. A retailer's license, class C/N or D/N may be issued for a nightclub on the premises of a hotel that was legally located in a residence district and was operating a nightclub, as defined by this chapter, on the licensed premises on September 30, 1986. (Jan. 24, 1934, 48 Stat. 328, ch. 4, § 15; June 16, 1934, 48 Stat. 974, ch. 552; May 22, 1958, 72 Stat. 132, Pub. L. 85-423, § 1; 1973 Ed., § 25-116; Mar. 7, 1987, D.C. Law 6-217, § 10, 34 DCR 907; May 24, 1994, D.C. Law 10-122, § 2(g), 41 DCR 1658.)

Effect of amendments. — D.C. Law 10-122, in (a), substituted “or apartment house” for “apartment house, or club” twice in the first sentence, and added the second sentence.

Legislative history of Law 6-217. — See note to § 25-103.

Legislative history of Law 10-122. — See note to § 25-130.1.

§ 25-117. Same — Transfer restricted; fee.

No license shall be transferred by the licensee to any other person or to any other place, except with the written consent of the Board, upon a regular application therefor in writing and after notice and hearing, as herein provided for an original application for license, and the fee to be paid by the party applying for such transfer shall be \$150, which shall be paid to the Director of the Department of Finance and Revenue for the District of Columbia before such transfer is made; provided, that the Board shall not allow the transfer of the license of any person against whom there is pending in the courts or before the Board any charge of keeping a disorderly house, or of violating this chapter or the laws against gambling in the District of Columbia. (Jan. 24, 1934, 48 Stat. 330, ch. 4, § 16; May 27, 1949, 63 Stat. 135, ch. 146, title V, § 503; 1973 Ed., § 25-117; Mar. 5, 1981, D.C. Law 3-157, § 2(d), 27 DCR 5117.)

Cross references. — As to authority of Council to change tax rates, see § 47-504.

Legislative history of Law 3-157. — See note to § 25-107.

History of Alcoholic Beverage Control Board. — See note to § 25-104.

Office of Collector of Taxes abolished. — The Office of the Collector of Taxes was abolished and the functions thereof transferred to the Board of Commissioners of the District of Columbia by Reorganization Plan No. 5 of 1952. All functions of the Office of the Collector of Taxes including the functions of all officers,

employees and subordinate agencies were transferred to the Director, Department of General Administration by Reorganization Order No. 3, dated August 28, 1952. Reorganization Order No. 20, dated November 10, 1952, transferred the functions of the Collector of Taxes to the Finance Office. The same Order provided for the Office of the Collector of Taxes headed by a Collector in the Finance Office, and abolished the previously existing Office of the Collector of Taxes. Reorganization Order No. 20 was superseded and replaced by Organization Order No. 121, dated December 12, 1957, which provided

that the Finance Office (consisting of the Office of the Finance Officer, Property Tax Division, Revenue Division, Treasury Division, Accounting Division, and Data Processing Division) would continue under the direction and control of the Director of General Administration, and that the Treasury Division would perform the function of collecting revenues of the District of Columbia and depositing the same with the Treasurer of the United States. Organization Order No. 121 was revoked by Organization Order No. 3, dated December 13, 1957, Part IVC of which prescribed the functions of the Finance Office within a newly established Department of General Administration. The executive functions of the Board of Commissioners were transferred to the Commissioner of the District of Columbia by § 401 of Reorganization Plan No. 3 of 1967. Functions of the Finance Office as stated in Part IVC of Organization Order No. 3 were transferred to the Director of the Department of Finance and Revenue by Commissioner's Order No. 69-96, dated March 7, 1969.

Intent of section. — In enacting this section, Congress sought to prevent transfer "by the licensee" when he has charges pending against him. *Hornstein v. District of Columbia ABC Bd.*, App. D.C., 321 A.2d 567 (1974).

Judicial review. — The Court of Appeals

may not disturb any Board action in the exercise of its statutory powers unless such action is plainly wrong or without support in substantial evidence in the administrative record. *Schiffmann v. District of Columbia ABC Bd.*, App. D.C., 302 A.2d 235 (1973).

Remand to determine quorum. — Where the Court of Appeals could not determine from the record whether the Board's decision denying petition for reconsideration of transfer had been issued while there was a quorum, the case was remanded to determine whether it existed. *Palisades Citizens Ass'n v. District of Columbia ABC Bd.*, App. D.C., 324 A.2d 692 (1974).

Presumption on moral character. — In a case concerning an application for transfer of liquor license rather than initial granting of license, appellate court must presume that applicant's moral character was determined by the Board when the original license was issued. *Northeast Liquors, Inc. v. District of Columbia ABC Bd.*, App. D.C., 302 A.2d 222 (1973).

Opposing party has burden to prove character changes. — The party opposing a transfer of a license has the burden of showing change in circumstances relating to the applicant's moral character. *Northeast Liquors, Inc. v. District of Columbia ABC Bd.*, App. D.C., 302 A.2d 222 (1973).

§ 25-118. Same — Revocation or suspension; offer in compromise of suspension; causes; hearing; posting of notice.

(a) If during the period for which any license was issued the licensee shall be convicted of any felony, or if any licensee violates any of the provisions of this chapter or any of the rules or regulations promulgated pursuant thereto or any other laws, rules, or regulations of the District or fails to superintend in person, or through a manager approved by the Board, the business for which the license was issued, or allows the premises with respect to which the license of such licensee was issued, to be used for any unlawful, disorderly, or immoral purpose, or such licensee otherwise fails to carry out in good faith the provisions of this chapter, the Board may suspend or revoke the license of said licensee, or, in lieu of suspension, may accept an offer in compromise of said suspension after the licensee has been given an opportunity to be heard in his defense, subject to review by the Mayor in case of revocation or in case of suspension for a period of more than 30 days, as herein provided. In case a license issued hereunder shall be revoked or suspended, no part of the license fee shall be returned, and the Board may, in its discretion, subject to review by the Mayor, as a part of the order of revocation provide that no license shall be granted for the same place for the period of 1 year next after such revocation, and in case such order shall be made no license shall, during said year, be issued for said place or to a person or persons whose license is so revoked for any other location.

(b) In the event the Board at any time shall order the suspension of any license a notice may be posted by the Board, in a conspicuous place, on the outside of the licensed premises, at or near the main street entrance thereto; which notice shall state that the license theretofore issued to the licensee has been suspended and shall state the time for which said license is suspended, and state that the suspension is ordered because of a violation of this chapter, or of the Council of the District of Columbia's regulations adopted under authority of this chapter.

(c) The Board shall revoke the license of any licensee who has knowingly permitted, on the licensed premises, the illegal sale, or negotiations for sale, or the use, of any controlled substance identified in the District of Columbia Uniform Controlled Substances Act of 1981 ("CSA"), or the possession or sale, or negotiations for sale, of drug paraphernalia in violation of the CSA or Chapter 6 of Title 33. Successive sales, or negotiations for sale, over a continuous period of time amounting to a recognizable pattern of activity shall be deemed evidence of knowing permission.

(d) Whenever the Board revokes a license or suspends a license for a period of more than 30 days, the licensee may, within 10 business days after the order of revocation or suspension is entered, submit a written appeal to the Mayor to review the action of the Board. The Mayor may convene a hearing on the appeal, and may review oral or written evidence in accordance with procedures the Mayor may establish by rule. The decision of the Mayor on any question of fact involved in an appeal shall be final and conclusive. Pending the Mayor's decision on an appeal, the Board's order of revocation or suspension shall stand unless the Mayor orders otherwise.

(e) In accordance with procedures that the Mayor shall establish, the Department of Consumer and Regulatory Affairs and the Fire Department shall promptly notify the Board whenever a licensed establishment is the subject of a citation or other enforcement action for a violation of laws or rules enforced by these departments.

(f) Whenever a licensed establishment is the subject of an incident report by the Metropolitan Police Department, the Department shall file a copy of the incident report with the Board. The Board shall make such report available for public inspection upon request.

(g)(1) If the Board determines, after investigation, that the operations of a licensee present an imminent danger to the health and safety of the public, the Board may summarily suspend or restrict, without a hearing, the license to sell alcoholic beverages in the District.

(2) A licensee shall have the right to request a hearing within 72 hours after service of notice of the summary suspension or restriction of a license. The Board shall hold a hearing within 48 hours of receipt of a timely request, and shall issue a decision within 24 hours after the hearing.

(3) Every decision and order adverse to a licensee shall be in writing and shall be accompanied by findings of fact and conclusions of law. The findings shall be supported by, and in accordance with, reliable, probative, and substantial evidence. The Board shall provide a copy of the decision and order and accompanying findings of fact and conclusions of law to each party to a case or to his or her attorney of record.

(4) Any person aggrieved by a final summary action may file an appeal in accordance with subchapter I of Chapter 15 of Title 1. (Jan. 24, 1934, 48 Stat. 330, ch. 4, § 17; Aug. 27, 1935, 49 Stat. 900, ch. 756, § 9; Aug. 25, 1937, 50 Stat. 803, ch. 766, § 3; Apr. 26, 1950, 64 Stat. 88, ch. 106; Dec. 8, 1970, 84 Stat. 1393, Pub. L. 91-535, § 3(a); 1973 Ed., § 25-118; Sept. 29, 1982, D.C. Law 4-157, §§ 9, 15, 29 DCR 3617; Mar. 8, 1984, D.C. Law 5-51, § 2(b)(5), 30 DCR 5927; Mar. 7, 1987, D.C. Law 6-217, § 11; 34 DCR 907; Sept. 11, 1993, D.C. Law 10-12, § 2(b), 40 DCR 4020; May 24, 1994, D.C. Law 10-122, § 2(h), 41 DCR 1658.)

Cross references. — As to administrative procedure, see § 1-1501 et seq.

As to judicial review, see §§ 1-1510 and 11-722.

As to general penalties for violations of chapter or rules and regulations, see § 25-132.

As to refund of fees when license refused, see § 47-1318.

Section references. — This section is referred to in § 25-106.

Effect of amendments. — D.C. Law 10-122 added (f) and (g).

Emergency act amendments. — For temporary amendment of section, see § 2(b) of the Underage Drinking Emergency Amendment Act of 1994 (D.C. Act 10-236, April 28, 1994, 41 DCR 2601).

Legislative history of Law 4-157. — See note to § 25-103.

Legislative history of Law 5-51. — See note to § 25-104.

Legislative history of Law 6-217. — See note to § 25-103.

Legislative history of Law 10-12. — See note to § 25-148.

Legislative history of Law 10-122. — See note to § 25-130.1.

References in text. — The “District of Columbia Uniform Controlled Substances Act of 1981,” referred to in subsection (c), is D.C. Law 4-29.

History of Alcoholic Beverage Control Board. — See note to § 25-104.

Delegation of Authority — Secretary of the District of Columbia. — See Mayor’s Order 95-26, January 27, 1995.

Mixed functions. — Mixing of prosecutorial and adjudicative functions by the Board is a necessary part of the administrative scheme and does not violate due process. *James Bakalis & Nickie Bakalis, Inc. v. Simonson*, 434 F.2d 515 (D.C. Cir. 1970).

Board should articulate its standards for suspension of liquor licenses in its order of suspension. *Am-Chi Restaurant, Inc. v. Simonson*, 396 F.2d 686 (D.C. Cir. 1968).

Board has independent statutory authority to suspend liquor license if, without more, the premises are used for any unlawful

purpose. *Club 99, Inc. v. District of Columbia ABC Bd.*, App. D.C., 457 A.2d 773 (1982).

Findings of the Board are presumptively valid. *James Bakalis & Nickie Bakalis, Inc. v. Simonson*, 434 F.2d 515 (D.C. Cir. 1970).

Decision based on substantial evidence within Board’s discretion. — Where evidence relied on by the Board to find that licensee failed to superintend, satisfied the statutory test of substantial evidence, its decision to revoke the license was within the scope of its statutory discretion, notwithstanding the claim that it amounted to “economic execution.” *2447 Good Hope Rd., Inc. v. District of Columbia ABC Bd.*, App. D.C., 295 A.2d 513 (1972).

Performance not grounds for suspension. — Performance on premises of retail liquor licensee by dancer who wore bikini-type panties and who wrapped her legs around shoulders of male customers who were leaning over rim of stage did not overstep constitutional protections and is not ground for suspension of liquor license. *4934, Inc. v. Washington*, App. D.C., 375 A.2d 20 (1977).

No authority to prohibit purchases by retailer. — The Board does not have authority to prohibit purchases by a liquor retailer delinquent in the payment of his account to wholesalers but can only revoke or suspend the license of retailer for violating rules or regulations concerning credit. *Press Liquors, Inc. v. Weakley*, 317 F.2d 135 (D.C. Cir. 1963).

Injunction should not issue during unavoidable delay on appeal. — An injunction against enforcement of order of the Board revoking a license should not issue for any period while failure of the Mayor to reach a decision on appeal is caused by unavoidable circumstances. *Lambros v. Young*, 145 F.2d 341 (D.C. Cir. 1944).

Judicial review. — Findings of the Board supported by substantial evidence are not at liberty to be disturbed by the reviewing court. *Meteor Corp. v. District of Columbia ABC Bd.*, App. D.C., 316 A.2d 545 (1974).

Cited in *Alrob Enters., Inc. v. District of Columbia ABC Bd.*, App. D.C., 337 A.2d 497 (1975).

§ 25-119. Same — Revocation where manufacturer has substantial interest; furnishing of money or equipment by manufacturer restricted; extension of credit permitted; “manufacturer” defined.

If any manufacturer of beverages, whether licensed hereunder or not, by direct ownership, stock ownership, interlocking directors, mortgage, or lien, or by any other means shall have such a substantial interest, whether direct or indirect, in the business of any wholesale or retail licensee or in the premises on which said business is conducted as in the judgment of the Board may tend to influence such licensee to purchase beverages from such manufacturer, the Board may, in its discretion, revoke the license issued in respect of the business in which such manufacturer is interested, subject to review by the Mayor as herein provided. No such manufacturer of beverages shall loan or give any money to any wholesale or retail licensee, or sell, rent, loan, or give to such licensee any equipment, furniture, fixtures, or property, or give or sell any service to such licensee; provided, however, that with the prior approval of the Board, a manufacturer may sell, give, rent, or loan to a wholesale or retail licensee any service or article of property costing such manufacturer not more than \$50. No wholesale or retail licensee shall receive or accept any loan or gift of money from any such manufacturer or purchase from, rent from, borrow, or receive by gift from such manufacturer any equipment, furniture, fixtures, or property, or accept or receive any service from such manufacturer; provided, however, that with the prior approval of the Board, a wholesale or retail licensee may purchase from, rent from, borrow, or receive by gift from such manufacturer any service or article of property costing such manufacturer not more than \$50. Nothing herein contained, however, shall prohibit the sale of alcoholic and nonalcoholic beverages and the reasonable extension of credit therefor by a manufacturer to a wholesale or retail licensee. When used in this section the word “manufacturer” shall include any stockholder holding directly or indirectly 25% or more of the common stock or any officer of a manufacturer of beverages, if a corporation, whether licensed hereunder or not. This section shall not apply to retail licenses, class E, or to the wholesale license held by a person not licensed as a manufacturer hereunder owning an establishment for the manufacture of beverages outside of the District of Columbia. (Jan. 24, 1934, 48 Stat. 330, ch. 4, § 18; Aug. 27, 1935, 49 Stat. 902, ch. 756, § 15; 1973 Ed., § 25-119; Sept. 29, 1982, D.C. Law 4-157, §§ 10, 15, 29 DCR 3617; Mar. 8, 1984, D.C. Law 5-51, § 2(b)(6), 30 DCR 5927.)

Cross references. — As to administrative procedure, see § 1-1501 et seq.

As to judicial review, see §§ 1-1510 and 11-722.

As to business interests forbidden, see §§ 25-105, 25-113, 25-115, and 25-120.

As to sale of beverages on credit, see §§ 25-120 and 25-133.

Legislative history of Law 4-157. — See note to § 25-103.

Legislative history of Law 5-51. — See note to § 25-104.

History of Alcoholic Beverage Control Board. — See note to § 25-104.

Application of section. — This section applies only to a manufacturer who has a sub-

stantial interest in the business of its customer, or in his premises, as to influence the customer to purchase beverages from him. *Press Liquors, Inc. v. Weakley*, 317 F.2d 135 (D.C. Cir. 1963).

§ 25-120. Same — Revocation where wholesaler has substantial interest; furnishing of money or equipment by wholesaler restricted; extension of credit permitted; “wholesaler” defined.

If any wholesaler of beverages, whether licensed hereunder or not, by direct ownership, stock ownership, interlocking directors, mortgage or lien or by any other means shall have such a substantial interest either direct or indirect in the business of any retail licensee or in the premises on which said business is conducted as in the judgment of the Board may tend to influence such licensee to purchase beverages from such wholesaler, the Board may in its discretion revoke the license issued in respect of the business in which such wholesaler is interested, subject to review by the Mayor as herein provided. No such wholesaler of beverages shall lend or give any money to any retail licensee or sell to such licensee, any equipment, furniture, fixtures, or property, except merchandise sold at the fair market value for resale by such licensee, or rent, loan, or give to such licensee any equipment, furniture, fixtures, or property, or give or sell any service to such licensee; provided, however, that, with the prior approval of the Board, a wholesaler may sell, give, rent, or loan to such licensee any service or article of property costing such wholesaler not more than \$50. No retail licensee shall receive or accept any loan or gift of money from any such wholesaler or purchase from any such wholesaler any equipment, furniture, fixtures, or property, except merchandise purchased at the fair market value for resale, or rent from, borrow, or receive by gift from such wholesaler any equipment, furniture, fixtures, or property, or receive any service from such wholesaler; provided, however, that with the prior approval of the Board, a retail licensee may purchase from, rent from, borrow, or receive by gift from such wholesaler any service or article of property costing such wholesaler not more than \$50. Nothing herein contained, however, shall prohibit the reasonable extension of credit by a wholesaler for merchandise sold to a retail licensee for resale as herein permitted. When used in this section the word “wholesaler” shall include any stockholder holding directly or indirectly 25% or more of the common stock or any officer of a wholesaler of beverages, if a corporation, whether licensed hereunder or not. This section shall not apply to retail licenses, class E. (Jan. 24, 1934, 48 Stat. 331, ch. 4, § 19; Aug. 27, 1935, 49 Stat. 903, ch. 756, § 16; 1973 Ed., § 25-120; Sept. 29, 1982, D.C. Law 4-157, §§ 11, 15, 29 DCR 3617; Mar. 8, 1984, D.C. Law 5-51, § 2(b)(7), 30 DCR 5927.)

Cross references. — As to age of majority, see note following § 21-101.

Legislative history of Law 4-157. — See note to § 25-103.

Legislative history of Law 5-51. — See note to § 25-104.

History of Alcoholic Beverage Control Board. — See note to § 25-104.

Application of section. — This section applies only to a wholesaler who has a substantial interest in the business of its customer, or in his premises, as to influence the customer to pur-

chase beverages from him. *Press Liquors, Inc. v. Weakley*, 317 F.2d 135 (D.C. Cir. 1963).

Administrative interpretation not entitled to judicial deference. — Alcoholic Beverage Control Board's interpretation of regulations governing extensions of credit from wholesalers of alcoholic beverages to retailers was not entitled to judicial deference where administrative construction of regulations was neither long-standing nor consistent. *Superior Beverages, Inc. v. District of Columbia ABC Bd.*, App. D.C., 567 A.2d 1319 (1989).

History of regulations governing extensions of credit from wholesalers of alcoholic beverages to retailers does not indi-

cate that regulations should be interpreted to require wholesalers to charge their cash-on-delivery customers the same price they charge their lawful credit customers. *Superior Beverages, Inc. v. District of Columbia ABC Bd.*, App. D.C., 567 A.2d 1319 (1989).

Term "payment in full" as used in regulations governing extensions of credit from wholesalers of alcoholic beverages to retailers refers to the terms of the parties purchase agreement and does not apply to the actual amount the wholesaler charges or the retailer agrees to pay. *Superior Beverages, Inc. v. District of Columbia ABC Bd.*, App. D.C., 567 A.2d 1319 (1989).

§ 25-121. Sale to minors or intoxicated persons prohibited; consumption on licensed premises prohibited.

(a) Licenses issued hereunder shall not authorize the sale or delivery of beverages, except as permitted in subsections (i) and (j) of this section, to any person under the age of 21 years, either for his own use or for the use of any other person; or the sale, service, or delivery of beverages to any intoxicated person, or to any person of notoriously intemperate habits, or to any person who appears to be intoxicated. No licensee shall be liable to any person for damages claimed to arise from refusal to sell such alcoholic beverages.

(b) No person being the holder of a retail license issued pursuant to this chapter shall permit on the licensed premises the consumption of alcoholic beverages, except as permitted in subsections (i) and (j) of this section, by any person under the age of 21 years, by any intoxicated person, or any person of notoriously intemperate habits, or any person who appears to be intoxicated. No licensee shall be liable to any person for damages claimed to arise from refusal to permit the consumption of any beverage on any premises licensed under this chapter.

(b-1) The holder of a retailer's license, class A shall not permit any person under the age of 18 years to enter the licensed premises between the hours of 8 a.m. and 3 p.m. on any day in which the public schools of the District of Columbia are in session during the regular school year. It shall be an affirmative defense to a charge of violating this subsection that the licensee or his or her employee reasonably believed that the person was 18 years of age or older or was not truant or unlawfully absent from school. This subsection shall not apply to the holder of a retailer's license, class A for a supermarket where the primary purpose is the sale of a full range of fresh, canned, and frozen food items, household products, and sundries, and where the sale of alcoholic beverages is incidental to the primary purpose.

(c) Except as otherwise permitted by law, no licensee shall deny admittance to any person displaying proof of age in the manner prescribed in subsection (d) of this section. No licensee shall require proof of age to discriminate on any ground prohibited by Chapter 25 of Title 1.

(d)(1) A licensee shall refuse to sell, serve, or deliver an alcoholic beverage to any person who, upon request of the licensee, fails to produce a valid

identification document displaying proof of legal drinking age as required by this section.

(2) For the purpose of this subsection, the term “valid identification document” means an official identification issued by an agency of government (local, state, federal, or foreign) containing, at a minimum, the name, date of birth, signature, and photograph of the bearer.”

(e) Each retail licensee shall post a notice on the licensed premises of the requirements of subsection (d) of this section and of any further stipulations the Board may require, including the posting of the current legal drinking ages. The notice shall be posted in a place clearly visible from the point of entry to the licensed premises and shall be maintained in good repair.

(f) A licensee or his designee shall make a good faith effort to ascertain whether any person to whom he sells, delivers, or serves alcoholic beverages is of legal drinking age as provided by law. Any person who supplies proof of age showing his or her age to be the legal drinking age as provided in subsection (d) of this section shall be deemed to be of legal drinking age and the licensee shall not be liable solely because the person is not of the legal drinking age as provided in subsections (a) and (b) of this section.

(g)(1) Upon finding that a licensee has violated subsection (c), (d), or (e) of this section, the Board shall:

(A) Upon the first violation, fine the licensee not less than \$1,000 and not more than \$2,000, or suspend the license for 10 consecutive days;

(B) Upon the second violation, fine the licensee not less than \$2,000 and not more than \$4,000 and suspend the license for 20 consecutive days; and

(C) Upon the third violation and each subsequent violation, fine the licensee not less than \$4,000 and not more than \$10,000 and suspend the license for 30 consecutive days, or revoke the license.

(2) In the event of revocation or suspension of the license pursuant to this subsection the Alcoholic Beverage Control Division shall post a notice in a conspicuous place on the exterior of the premises stating the reason for the revocation or suspension. The notice shall remain posted through the prescribed dates. The licensee shall immediately notify the Alcohol Beverage Control Division if the notice is removed or defaced. Failure of the licensee to notify the Alcohol Beverage Control Division may result in the extension of the prescribed period of revocation or suspension.

(h) The rights and remedies contained in this section shall not be construed to limit or exclude other rights and remedies provided by law with respect to discrimination.

(i) A licensee under this act may allow a person who has attained 18 years of age before September 30, 1986, to receive and consume beer and light wines.

(j) A licensee under this act may allow a person who is 18 years old or older to sell, serve, or deliver any alcoholic beverage on the licensed premises; except that no person under the age of 21 shall be allowed to serve as a bartender. For the purposes of this subsection, a “bartender” shall mean any person who fixes, mixes, makes, or concocts any alcoholic beverage for consumption. (Jan. 24, 1934, 48 Stat. 331, ch. 4, § 20; Aug. 27, 1935, 49 Stat. 901, ch. 756, § 10; June 29, 1953, 67 Stat. 104, ch. 159, § 404(g); 1973 Ed., § 25-121; Sept. 29, 1982,

D.C. Law 4-157, § 12, 29 DCR 3617; Sept. 26, 1984, D.C. Law 5-106, § 2, 31 DCR 3381; Feb. 24, 1987, D.C. Law 6-178, § 2(a), 33 DCR 7654; Mar. 7, 1987, D.C. Law 6-217, § 12, 34 DCR 907; Sept. 11, 1993, D.C. Law 10-12, § 2(c), 40 DCR 4020; May 24, 1994, D.C. Law 10-122, § 2(i), 41 DCR 1658.)

Section references. — This section is referred to in §§ 25-130.1 and 25-148.

Cross references. — As to administrative procedure, see § 1-1501 et seq.

As to judicial review, see §§ 1-1510 and 11-722.

As to business interests forbidden, see §§ 25-105, 25-113, 25-115, and 25-120.

As to sale of beverages on credit, see §§ 25-119 and 25-133.

Section references. — This section is referred to in § 25-125.

Effect of amendments. — D.C. Law 10-122 rewrote (d)(1) and (2); and deleted (d)(3).

Emergency act amendments. — For temporary amendment of section, see § 2(c) of the Underage Drinking Emergency Amendment Act of 1994 (D.C. Act 10-236, April 28, 1994, 41 DCR 2601).

Legislative history of Law 4-157. — See note to § 25-103.

Legislative history of Law 5-106. — Law 5-106, the “Alcoholic Beverage Anti-Discrimination Act of 1984,” was introduced in Council and assigned Bill No. 5-129, which was referred to the Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and second readings on May 29, 1984, and June 12, 1984, respectively. Signed by the Mayor on June 29, 1984, it was assigned Act No. 5-148 and transmitted to both Houses of Congress for its review.

Legislative history of Law 6-178. — Law 6-178, the “District of Columbia Alcoholic Beverage Control Act Legal Drinking Age Amendment Act of 1986,” was introduced in Council and assigned Bill No. 6-508, which was referred to the Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and second readings on November 5, 1986 and November 18, 1986, respectively. Signed by the Mayor on November 25, 1986, it was assigned Act No. 6-229 and transmitted to both Houses of Congress for its review.

Legislative history of Law 6-217. — See note to § 25-103.

Legislative history of Law 10-12. — See note to § 25-148.

Legislative history of Law 10-122. — See note to § 25-130.1.

Purpose. — This section has a public safety purpose and its unexcused violation, therefore, constitutes negligence per se. *Rong Yao Zhou v. Jennifer Mall Restaurant, Inc.*, App. D.C., 534 A.2d 1268 (1987).

The legislative purpose in enacting this sec-

tion was not to convert a tavern keeper into an insurer against intentional torts committed by intoxicated patrons who were served additional liquor. *Kesner v. Rumors, Inc.*, 116 WLR 2021 (Super. Ct. 1988).

Court lacked jurisdiction where no contested case. — The Appellate Court lacked jurisdiction to hear allegations of violations of the Alcohol Beverage Control Act where the Alcohol Beverage Control Board’s action at issue did not arise out of a contested case proceeding. *Jones v. District of Columbia ABC Bd.*, App. D.C., 621 A.2d 385 (1993).

Cause of action stated. — Complaint brought by a shooting victim committed by a police officer which alleged that the bar owner violated a duty under this section owed to the victim by serving the officer when he knew that the officer was intoxicated stated a cause of action against the bar owner. *Marusa v. District of Columbia*, 484 F.2d 828 (D.C. Cir. 1973).

An implied cause of action did not lie against a tavern keeper for the tortious conduct of its patron who became intoxicated on the premises. *Norwood v. Marrocco*, 780 F.2d 110 (D.C. Cir. 1986).

Section creates civil cause of action against tavern keeper who serves intoxicated person for damages caused by the intentional torts of the intoxicated patron. *Norwood v. Marrocco*, 586 F. Supp. 101 (D.D.C. 1984), *aff’d*, 780 F.2d 110 (D.C. Cir. 1986).

Actions against tavern keepers by injured third parties. — This section, while not itself providing a cause of action against tavern keepers by injured third parties, supplies the standard of care by which tavern keepers’ conduct is to be measured under the common law. *Rong Yao Zhou v. Jennifer Mall Restaurant, Inc.*, App. D.C., 534 A.2d 1268 (1987). But see, *Norwood v. Marrocco*, 586 F. Supp. 101 (D.D.C. 1984), *aff’d*, 780 F.2d 110 (D.C. Cir. 1986).

Third parties sufferin’g accidental injuries as the result of the acts of an intoxicated person state a cause of action against a tavern keeper where they allege (1) that the tavern keeper violated subsection (b) of this section by serving a patron who was, or appeared to be, already intoxicated, and (2) that the statutory violation was a proximate cause of the injuries. *Rong Yao Zhou v. Jennifer Mall Restaurant, Inc.*, App. D.C., 534 A.2d 1268 (1987).

Patron of a bar who was the victim of an intentional assault by an intoxicated patron, and who is not claiming to be the victim of an accident, is not within the class of persons who

are within the ambit of statutory protection of subsection (b) which thus cannot serve as the basis of a cause of action. *Kesner v. Rumors, Inc.*, 116 WLR 2021 (Super. Ct. 1988).

Lack of evidence of intoxicated appearance not ground for directing verdict for tavern keeper. — In a civil suit against tavern keeper for damages caused by the intentional tort of patron who became intoxicated on the premises, the lack of evidence that the patron appeared intoxicated at the time he was served

alcoholic beverages by the tavern is no longer a valid ground for directing a verdict for the tavern keeper. *Norwood v. Marrocco*, 586 F. Supp. 101 (D.D.C. 1984), *aff'd*, 780 F.2d 110 (D.C. Cir. 1986).

Cited in *D.T. Corp. v. District of Columbia ABC Bd.*, App. D.C., 407 A.2d 707 (1979); *K.G.S., Inc. v. District of Columbia ABC Bd.*, App. D.C., 531 A.2d 1001 (1987); *United States v. Vaughn*, 117 WLR 441 (Super. Ct. 1989).

§ 25-122. Forfeiture of license upon licensee becoming bail.

If any person holding a license under this chapter shall become bail for any person complained of for the violation of any provisions of this chapter, his license shall become void as of the date of becoming such bail. (Jan. 24, 1934, 48 Stat. 331, ch. 4, § 21; 1973 Ed., § 25-122.)

§ 25-123. Monthly reports of beverages manufactured or purchased.

(a) Each holder of a manufacturer's license shall, on or before the 10th day of each month, furnish to the Board, on a form to be prescribed by the Mayor, a statement under oath, showing the quantity of each kind of beverages, except beer, manufactured during the preceding calendar month. Beverages shall not be considered as manufactured within the meaning of this section and § 25-124 until they are ready for sale.

(b) Each holder of a wholesaler's or retailer's license shall, on or before the 10th day of each month, furnish to the Board, on a form to be prescribed by the Mayor, a statement under oath, showing the quantity of each kind of beverages, except beer, purchased by him during the preceding calendar month, and also showing the date of each such purchase, the name of the person from whom purchased, giving the license number of the vendor, if licensed hereunder, and the quantity and kind of beverages in each such purchase.

(c) The Council of the District of Columbia may at any time suspend or revoke in whole or in part the requirements of this section. (Jan. 24, 1934, 48 Stat. 332, ch. 4, § 22; Apr. 30, 1934, 48 Stat. 654, ch. 181, § 2; 1973 Ed., § 25-123; Sept. 29, 1982, D.C. Law 4-157, § 15, 29 DCR 3617; Mar. 8, 1984, D.C. Law 5-51, § 2(b)(8), 30 DCR 5927.)

Cross references. — As to report of sales of beer, see § 25-138.

Legislative history of Law 4-157. — See note to § 25-103.

Legislative history of Law 5-51. — See note to § 25-104.

History of Alcoholic Beverage Control Board. — See note to § 25-104.

§ 25-124. Beverage taxes; amount; collection; exemptions; reports.

(a) There shall be levied, collected, and paid on all of the following named beverages manufactured by a holder of a manufacturer's license and on all of

the said beverages imported or brought into the District by a holder of a wholesaler's license, except beverages as may be sold to a dealer licensed under the laws of any state or territory of the United States and not licensed under this chapter, and on all beverages imported or brought into the District by a holder of a retailer's license, a tax at the following rates to be paid by the licensee in the manner hereinafter provided:

(1) A tax of \$.30 on every wine-gallon of wine containing 14% or less of alcohol by volume, other than champagne, sparkling wine, and any wine artificially carbonated, and a proportionate tax at a like rate on all fractional parts of such gallon;

(2) A tax of \$.40 on every wine-gallon of wine containing more than 14% of alcohol by volume, other than champagne, sparkling wine, and any wine artificially carbonated, and a proportionate tax at a like rate on all fractional parts of such gallon;

(3) A tax of \$.45 on every wine-gallon of champagne, sparkling wine, and any wine artificially carbonated, and a proportionate tax at a like rate on all fractional parts of such gallon;

(4) A tax of \$1.50 on every wine-gallon of spirits and a proportionate tax at a like rate on all fractional parts of such gallon; and

(5) A tax of \$1.50 on every wine-gallon of alcohol and a proportionate tax at a like rate on all fractional parts of such gallon.

(b) Said taxes shall be collected by and paid to the Director of the Department of Finance and Revenue of the District of Columbia and shall be deposited in the Treasury of the United States to the credit of the District of Columbia.

(c) Said taxes shall be collected and paid in the following manner:

(1) Each holder of a manufacturer's or wholesaler's license shall, on or before the 15th day of each month, furnish to the Mayor or his designated agent on a form to be prescribed by the Mayor, a statement under oath showing the quantity of beverage subject to taxation hereunder sold by him during the preceding calendar month and shall, on or before the 15th day of each month, pay to the Mayor or his designated agent the tax hereby imposed upon the quantity of beverages subject to taxation hereunder sold by him during the preceding calendar month.

(2) No licensee holding a retailer's license shall transport or cause to be transported into the District of Columbia any beverages subject to taxation hereunder other than the regular stock on hand in a passenger-carrying marine vessel operating in and beyond the District of Columbia, or a club car or a dining car on a railroad operating in and beyond the District of Columbia, for which a retailer's license, class C or D, has been issued under this chapter, unless such licensee has first obtained a permit so to do from the Alcoholic Beverage Control Board. No such permit shall issue until the tax imposed by this section shall have been paid for the beverages for which the permit is requested. Such permit shall specifically set forth the quantity, character, and brand or trade name of the beverage to be transported and the names and addresses of the seller and of the purchaser. Such permit shall accompany such beverages during transportation in the District of Columbia to the licensed

premises of such retail licensee and shall be exhibited upon the demand of any police officer or duly authorized inspector of the Board. Such permit shall, immediately upon receipt of the beverage by the retail licensee, be marked "canceled" and retained by him.

(3) The Council of the District of Columbia is authorized and empowered to prescribe by regulation such other methods or devices or both for the assessment, evidencing of payment, and collection of the taxes imposed by this section in addition to or in lieu of the method hereinbefore set forth whenever in its judgment such action is necessary to prevent frauds or evasions.

(d) No tax shall be levied and collected on any alcohol exempt from tax under the laws of the United States, or on any alcohol sold for nonbeverage purposes by the holder of a manufacturer's or wholesaler's license, in accordance with the regulations promulgated by the Council of the District of Columbia.

(e) If any act of Congress shall hereafter prescribe for a federal volume tax on alcoholic beverages under which a portion of said tax shall be returned to the District of Columbia, the taxes levied under this section shall not be collected after the effective date, January 24, 1934.

(f)(1) No taxing provision of this section shall apply in the case of a passenger-carrying marine vessel operating in and beyond the District of Columbia, or a club car or a dining car on a railroad operating in and beyond the District of Columbia, for which a retailer's license, class C or D, has been issued under this chapter, except as set forth in this subsection.

(2) The tax as specified in subsection (a) of this section shall be paid on all such beverages as are sold and served by said licensee while passing through or when at rest in the District of Columbia, in the following manner: a record shall be made and kept by the licensee for each passenger-carrying marine vessel operating in and beyond the District of Columbia, and for each club car or dining car on a railroad operating in and beyond the District of Columbia, for which a retailer's license, class C or class D, has been issued under this chapter, of all alcoholic beverages sold and served in the District of Columbia, which record shall be subject to inspection by the Board. Each holder of such a license shall, on or before the 10th day of each month, forward to the Board, on a form to be prescribed by the Mayor, a statement under oath, showing the quantity of each kind of beverage, except beer and wines, sold under such license in the District of Columbia during the preceding calendar month and such statement shall be accompanied by payment of any tax imposed under this chapter upon any such beverages set forth in said report.

(g) The Council of the District of Columbia is authorized to require that the immediate container of each beverage subject to tax under this chapter contain the license number of each licensee who sells or offers for sale such beverage. Such license number must be affixed at the time of display or sale of said spirits by the retailer. This subsection shall not apply to spirit containers of less than 2 ounces. (Jan. 24, 1934, 48 Stat. 332, ch. 4, § 23; Apr. 30, 1934, 48 Stat. 654, ch. 181, § 3; June 18, 1934, 48 Stat. 1014, 1015, ch. 600, §§ 1, 2; Aug. 27, 1935, 49 Stat. 901, 903, ch. 756, §§ 11, 17; June 25, 1936, 49 Stat. 1921, ch. 804; June 25, 1948, 62 Stat. 991, ch. 646, § 32(b); May 24, 1949, 63 Stat. 107,

ch. 139, § 127; May 27, 1949, 63 Stat. 135, ch. 146, title V, § 505; May 18, 1954, 68 Stat. 113, ch. 218, title VIII, § 801; Mar. 31, 1956, 70 Stat. 81, ch. 154, title III, §§ 301, 302(a); July 25, 1958, 72 Stat. 418, Pub. L. 85-558, §§ 1 — 5; Sept. 14, 1961, 75 Stat. 510, Pub. L. 87-238, §§ 1 — 5; Mar. 2, 1962, 76 Stat. 17, Pub. L. 87-408, § 401; Sept. 30, 1966, 80 Stat. 855, Pub. L. 89-610, title I, § 101(a); Oct. 31, 1969, 83 Stat. 175, Pub. L. 91-106, title V, § 501(a), (b); 1973 Ed., § 25-124; Apr. 18, 1978, D.C. Law 2-73, § 3, 24 DCR 7066; Sept. 29, 1982, D.C. Law 4-157, § 15, 29 DCR 3617; Mar. 8, 1984, D.C. Law 5-51, § 2(b)(9), 30 DCR 5927; Mar. 14, 1985, D.C. Law 5-159, § 25(b), (c), 32 DCR 30; July 25, 1989, D.C. Law 8-17, § 7(a), 36 DCR 4160; May 4, 1990, D.C. Law 8-119, § 2, 37 DCR 1738.)

Cross references. — As to manufactured beverage defined, see § 25-123.

As to tax on beer, see § 25-138.

As to authority of Council to change tax rates, see § 47-504.

As to authority of Mayor to make rules and regulations, see § 47-1816.2.

As to redemption of cigarette or alcoholic beverage tax stamps, see § 47-2411.

Section references. — This section is referred to in § 25-123.

Legislative history of Law 2-73. — See note to § 25-103.

Legislative history of Law 4-157. — See note to § 25-103.

Legislative history of Law 5-51. — See note to § 25-104.

Legislative history of Law 5-159. — See note to § 25-104.

Legislative history of Law 8-17. — Law 8-17, the “Revenue Amendment Act of 1989,” was introduced in Council and assigned Bill No. 8-224, which was referred to the Committee on Finance and Revenue. The Bill was adopted on first and second readings on May 2, 1989 and May 16, 1989, respectively. Signed by the Mayor on May 26, 1989, it was assigned Act No. 8-34 and transmitted to both Houses of Congress for its review.

Legislative history of Law 8-119. — Law 8-119, the “Tax Amendment Act of 1990,” was introduced in Council and assigned Bill No. 8-371, which was referred to the Committee on Finance and Revenue. The Bill was adopted on first and second readings on January 30, 1990, and February 13, 1990, respectively. Approved without the signature of the Mayor on March 6, 1990, it was assigned Act No. 8-173 and transmitted to both Houses of Congress for its review.

History of Alcoholic Beverage Control Board. — See note to § 25-104.

Office of Collector of Taxes abolished. — The Office of the Collector of Taxes was abolished and the functions thereof transferred to the Board of Commissioners of the District of Columbia by Reorganization Plan No. 5 of

1952. All functions of the Office of the Collector of Taxes including the functions of all officers, employees and subordinate agencies were transferred to the Director, Department of General Administration by Reorganization Order No. 3, dated August 28, 1952. Reorganization Order No. 20, dated November 10, 1952, transferred the functions of the Collector of Taxes to the Finance Office. The same Order provided for the Office of the Collector of Taxes headed by a Collector in the Finance Office, and abolished the previously existing Office of the Collector of Taxes. Reorganization Order No. 20 was superseded and replaced by Organization Order No. 121, dated December 12, 1957, which provided that the Finance Office (consisting of the Office of the Finance Officer, Property Tax Division, Revenue Division, Treasury Division, Accounting Division, and Data Processing Division) would continue under the direction and control of the Director of General Administration, and that the Treasury Division would perform the function of collecting revenues of the District of Columbia and depositing the same with the Treasurer of the United States. Organization Order No. 121 was revoked by Organization Order No. 3, dated December 13, 1957, Part IVC of which prescribed the functions of the Finance Office within a newly established Department of General Administration. The executive functions of the Board of Commissioners were transferred to the Commissioner of the District of Columbia by § 401 of Reorganization Plan No. 3 of 1967. Functions of the Finance Office as stated in Part IVC of Organization Order No. 3 were transferred to the Director of the Department of Finance and Revenue by Commissioner’s Order No. 69-96, dated March 7, 1969.

Sale to foreign organizations. — Wholesaler of imported alcoholic beverages stored in private warehouse under charge of customs official was not liable for excise taxes on the sale of such beverages to foreign embassies and international organizations. *District of Columbia v. International Distrib. Corp.*, 331 F.2d 817 (D.C. Cir. 1964).

Timely application of tax stamps. — Alcoholic spirits remaining on retail liquor dealer's premises for over 25 hours without having tax stamps affixed were properly condemned and forfeited. *Apex Liquors, Inc. v. District of Columbia*, 303 F.2d 206 (D.C. Cir. 1962).

§ 25-125. Sale or distribution of beverages by minor prohibited.

Except as provided in § 25-121(i) and (j), no licensee under this chapter shall allow any minor under the age of 21 years of age to sell, give, furnish, or distribute any beverage. (Jan. 24, 1934, 48 Stat. 333, ch. 4, § 25; Aug. 27, 1935, 49 Stat. 901, ch. 756, § 12; Dec. 8, 1970, 84 Stat. 1393, Pub. L. 91-535, § 3(b); 1973 Ed., § 25-125; Feb. 24, 1987, D.C. Law 6-178, § 2(b), 33 DCR 7654; Mar. 7, 1987, D.C. Law 6-217, § 13, 34 DCR 907.)

Cross references. — As to age of majority, see note following § 21-101.

Legislative history of Law 6-217. — See note to § 25-103.

Legislative history of Law 6-178. — See note to § 25-121.

§ 25-126. Hearings before Board; subpoenas; witness fees; perjury.

Repealed. Mar. 7, 1987, D.C. Law 6-217, § 14, 34 DCR 907.

Legislative history of Law 6-217. — See note to § 25-103.

§ 25-127. Operation of locomotive, streetcar, elevator, watercraft, or horse-drawn vehicle by intoxicated person prohibited.

(a) No person shall be intoxicated while in charge of or operating any locomotive or while acting as a conductor or brakeman of a car or train of cars, or while in charge of or operating any streetcar, elevator, watercraft, or horse-drawn vehicle in the District of Columbia.

(b) Any person violating the provisions of this section shall be punished by a fine of not more than \$300, or by imprisonment for not longer than 3 months, or by both such fine and imprisonment in the discretion of the court.

(c) Nothing herein contained shall be construed as repealing or modifying any provision of §§ 40-301 to 40-303, 40-703, 40-712, 40-716 and 40-720.

(d) Civil fines, penalties, and fees may be imposed as alternative sanctions for any infraction of the provisions of this section, or any rules or regulations issued under the authority of this section, pursuant to subchapters I through III of Chapter 27 of Title 6. Adjudication of any infraction of this section shall be pursuant to subchapters I through III of Chapter 27 of Title 6. (Jan. 24, 1934, 48 Stat. 333, ch. 4, § 27; 1973 Ed., § 25-127; Oct. 5, 1985, D.C. Law 6-42, § 455(a), 32 DCR 4450.)

Legislative history of Law 6-42. — Law 6-42, the "Department of Consumer and Regulatory Affairs Civil Infractions Act of 1985," was

introduced in Council and assigned Bill No. 6-187, which was referred to the Committee on Consumer and Regulatory Affairs. The Bill was

adopted on first and second readings on June 25, 1985, and July 9, 1985, respectively. Signed by the Mayor on July 16, 1985, it was assigned Act No. 6-60 and transmitted to both Houses of Congress for its review.

Cited in *Rong Yao Zhou v. Jennifer Mall Restaurant, Inc.*, App. D.C., 534 A.2d 1268 (1987).

§ 25-128. Drinking of alcoholic beverage in public place prohibited; intoxication prohibited.

(a) No person shall in the District of Columbia drink any alcoholic beverage or possess in an open container any alcoholic beverage in any street, alley, park, or parking; or in any vehicle in or upon the same; or in or upon any premises where food, nonalcoholic beverages, or entertainment are sold or provided for compensation not licensed under this chapter; or in any place to which the public is invited for which a license has not been issued hereunder permitting the sale and consumption of such alcoholic beverage upon such premises except premises licensed under § 25-111(a)(12); or in any place to which the public is invited (for which a license under this chapter has been issued) at a time when the sale of such alcoholic beverages on the premises is prohibited by this chapter or by the regulations promulgated thereunder, or in any place for which a license under § 25-111(a)(12) has been issued at a time when the consumption of such alcoholic beverages on the premises is prohibited by regulations promulgated under this chapter. No person in the District of Columbia, whether in or on public or private property, shall be intoxicated and endanger the safety of himself or of any other person or of property.

(b) Any person violating the provisions of subsection (a) of this section shall be punished by a fine of not more than \$100 or by imprisonment for not more than 90 days, or both.

(c) Any person in the District of Columbia who is intoxicated in public and who is not conducting himself in such manner as to endanger the safety of himself or of any other person or of property, shall be dealt with in accordance with § 24-524. (Jan. 24, 1934, 48 Stat. 333, ch. 4, § 28; Aug. 27, 1935, 49 Stat. 901, 902, ch. 756, §§ 13, 14; June 29, 1953, 67 Stat. 104, ch. 159, § 404(h); Aug. 3, 1968, 82 Stat. 618, Pub. L. 90-452, § 2(a); 1973 Ed., § 25-128; Sept. 29, 1982, D.C. Law 4-157, § 13, 29 DCR 3617; Dec. 3, 1985, D.C. Law 6-64, § 2, 32 DCR 5970.)

Cross references. — As to presence in illegal establishment, see § 22-1515.

Section references. — This section is referred to in §§ 24-524 and 24-527.

Legislative history of Law 4-157. — See note to § 25-103.

Legislative history of Law 6-64. — Law 6-64, the “Ban on Possession of Open Alcoholic Beverage Containers Act of 1985,” was introduced in Council and assigned Bill No. 6-185, which was referred to the Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and second readings on September 10, 1985, and September 24, 1985, respectively. Signed by the Mayor on October 9, 1985, it was assigned Act No. 6-87 and trans-

mitted to both Houses of Congress for its review.

Applicability. — The legislative history of the open container statute reveals that it was designed to apply to all public areas. *Alvarez v. United States*, App. D.C., 576 A.2d 713, cert. denied, 498 U.S. 875, 111 S. Ct. 203, 112 L. Ed 2d 164 (1990).

“Street” includes roadway and sidewalk. — The term “street” in subsection (a) includes both the roadway and the sidewalk. *Alvarez v. United States*, App. D.C., 576 A.2d 713, cert. denied, 498 U.S. 875, 111 S. Ct. 203, 112 L. Ed 2d 164 (1990).

Probable cause for warrantless arrest. — Officer who observed a man in an alley

drinking from a bottle labeled wine had probable cause for arrest without warrant for the offense under this section. *Hutcherson v. United States*, 345 F.2d 964 (D.C. Cir.), cert. denied, 382 U.S. 894, 86 S. Ct. 188, 15 L. Ed. 2d 151 (1965).

Officer's observation of defendant's possession of an open can of beer on the sidewalk in violation of subsection (a) of this section provided probable cause for arrest under § 23-581(a)(1). *Alvarez v. United States*, App. D.C., 576 A.2d 713, cert. denied, 498 U.S. 875, 111 S. Ct. 203, 112 L. Ed. 2d 164 (1990).

Chronic alcoholism is a defense to a charge under this section and is not a crime. *Easter v. District of Columbia*, 361 F.2d 50 (D.C. Cir. 1966).

Treatment for chronic alcoholics. — A chronic alcoholic, when charged with any misdemeanor other than a charge of public intoxication under this section, may voluntarily request civil commitment in lieu of criminal prosecution for such misdemeanor; and the court may, on its own initiative, civilly commit a chronic alcoholic who has been charged with a violation of this section. *United States of Am. v. Lewis*, 123 WLR 245 (Super. Ct. 1994).

Intoxication as contributory negligence in civil suit. — In light of this section, injured party's own intoxication approached contributory negligence as a matter of law preventing his recovery in civil suit. *Norwood v. Marrocco*, 586 F. Supp. 101 (D.D.C. 1984), aff'd, 780 F.2d 110 (D.C. Cir. 1986).

Fine not cruel and inhuman punishment. — A fine of \$100 for intoxication under this section is not cruel and inhuman punishment, although defendant had been required to post only \$10 collateral as security for appearance for trial. *Coleman v. District of Columbia*, App. D.C., 203 A.2d 918 (1964).

Cited in *Peeples v. District of Columbia*, 75 A.2d 845 (D.C. 1950); *Williams v. District of Columbia*, App. D.C., 147 A.2d 773 (1959); *Heard v. District of Columbia*, App. D.C., 179 A.2d 723 (1962); *Dempsey v. United States*, App. D.C., 251 A.2d 650 (1969); *United States v. Cureton*, 110 WLR 245 (Super. Ct. 1982); *Schram v. District of Columbia*, App. D.C., 485 A.2d 623 (1984); *United States v. McCray*, 116 WLR 677 (Super. Ct. 1988); *Davis v. United States*, App. D.C., 590 A.2d 1036 (1991).

§ 25-129. Search warrants for illegal alcoholic beverages; obstructing or resisting officer; disposition of seized beverages.

(a) A search warrant may be issued by any judge of the Superior Court of the District of Columbia or by a United States Magistrate for the District of Columbia when any alcoholic beverages are manufactured for sale, kept for sale, sold, or consumed in violation of the provisions of this chapter, and any such alcoholic beverages and any other property designed for use in connection with such unlawful manufacture for sale, keeping for sale, selling, or consumption may be seized thereunder, and shall be subject to such disposition as the court may make thereof, and such alcoholic beverages may be taken on the warrant from any house or other place in which it is concealed.

(b) A search warrant cannot be issued but upon probable cause supported by affidavit particularly describing the property and the place to be searched.

(c) The judge or Magistrate must, before issuing the warrant, examine on oath the complainant and any witness he may produce, and require their affidavits or take their deposition in writing and cause them to be subscribed by the parties making them.

(d) The affidavits or depositions must set forth the facts tending to establish the grounds of the application or probable cause for believing that they exist.

(e) If the judge or Magistrate is thereupon satisfied of the existence of the grounds of the application or that there is probable cause to believe their existence, he must issue a search warrant signed by him with his name of office to the Chief of Police of the District of Columbia or any member of the Metropolitan Police Department, stating the particular grounds or probable

cause for its issue and the names of the persons whose affidavits have been taken in support thereof, and commanding him forthwith to search the place named for the property specified and to bring it before the judge or Magistrate.

(f) A search warrant may in all cases be served by any of the officers mentioned in its direction, but by no other person, except in aid of the officer on his requiring it, he being present and acting in its execution.

(g) The officer may break open any outer or inner door or window of a house, or any part of a house, or anything therein, to execute the warrant, if, after notice of his authority and purpose, he is refused admittance.

(h) The judge or Magistrate must insert a direction in the warrant that it be served in the daytime unless the affidavit is positive that the property is in the place to be searched in which case he must insert a direction that it be served at any time in the day or night.

(i) A search warrant must be executed and returned to the judge or Magistrate who issued it within 10 days after its date; after the expiration of this time the warrant, unless executed, is void.

(j) When the officer takes property under the warrant, he must give a copy of the warrant together with a receipt for the property taken (specifying it in detail) to the person from whom it was taken by him, or in whose possession it was found; or, in the absence of any person, he must leave it in the place where he found the property.

(k) The officer must forthwith return the warrant to the judge or Magistrate and deliver to him a written inventory of the property taken, made publicly or in the presence of the person from whose possession it was taken, and of the applicant for the warrant, if they are present, verified by the affidavit of the officer at the foot of the inventory and taken before the judge or Magistrate at the time, to the following effect: "I. R. S., the officer by whom this warrant was executed, do swear that the above inventory contains a true and detailed account of all the property taken by me on the warrant."

(l) The judge or Magistrate must thereupon, if required, deliver a copy of the inventory to the person from whose possession the property was taken and to the applicant for the warrant.

(m) The judge or Magistrate must annex the affidavits, search warrant, return, inventory, and evidence, and at once file the same, together with a copy of the record of his proceedings, with the Clerk of the Superior Court of the District of Columbia.

(n) Whoever shall knowingly and wilfully obstruct, resist, or oppose any such officer or person in serving or attempting to serve or execute any such search warrant, or shall assault, beat, or wound any such officer or person, knowing him to be an officer or person so authorized, shall be fined not more than \$1,000 or imprisoned not more than 2 years.

(o) If the accused be discharged, the beverages and other property seized shall be returned to the person in whose possession they were found; if he be convicted, the said beverages and other property shall be forfeited, and may be destroyed by the police department or delivered for medicinal, mechanical, or scientific uses to any department or agency of the United States government or the District of Columbia government or any hospital or other charitable

institution in the District of Columbia, or sold at public auction, as the Court may direct.

(p) If any of said property so seized, other than the said beverages and the containers thereof, shall be subject to a lien which is established by intervention or otherwise to the satisfaction of the Court as being bona fide and as having been created without the lienor's having any notice that said property was to be used in connection with the illegal manufacture for sale, keeping for sale, or selling of alcoholic beverages, the Court, upon the conviction of the accused, shall order a sale of said property at public auction and the officer making the sale, after deducting the expenses of keeping the property, the fee for the seizure and the cost of the sale, shall pay all such liens according to their priorities, and such lien or liens shall be transferred from the property to the proceeds of the sale thereof. (Jan. 24, 1934, 48 Stat. 334, ch. 4, § 29; Apr. 1, 1942, 56 Stat. 190, ch. 207, § 1; June 29, 1953, 67 Stat. 104, ch. 159, § 404(i); July 8, 1963, 77 Stat. 77, Pub. L. 88-60, § 1; July 29, 1970, 84 Stat. 570, Pub. L. 91-358, title I, § 155(a); 1973 Ed., § 25-129.)

Cross references. — As to disposition of property coming into hands of police, see § 4-152 et seq.

As to search warrants, see § 23-521 et seq.

Section references. — This section is referred to in § 25-144.

References in text. — The Act of Oct. 17, 1968, Pub. L. 90-578, terminated the Office of the United States Commissioner and established in place thereof the Office of the United States Magistrate. The Act became operative in the District of Columbia on June 27, 1969, when 2 United States Magistrates assumed the office pursuant to appointment by order of the District Court dated June 20, 1969.

Office of Major and Superintendent of Metropolitan Police abolished. — The Office of the Major and Superintendent of Metropolitan Police was abolished and all functions of that office transferred to and vested in the Chief of Police. The Assistant Superintendent, Executive Officer of the Metropolitan Police Department was designated "Deputy Chief of Police, Executive Officer"; the Assistant Superintendent of the Metropolitan Police in command of the Detective Bureau was designated "Deputy Chief of Police, Chief of Detectives"; and each other Assistant Superintendent of the Metropolitan Police was designated "Deputy Chief of Police" by Reorganization Order No. 7 dated September 16, 1952. Reorganization Order No. 7 was replaced by Organization Order No. 153, dated November 10, 1966.

Reasonableness test determines valid issuance. — The test of whether too long a period of time had passed for the issuance of a valid search warrant is one of reasonableness, although a less flexible standard is applied when the warrant is one that must be based on "positive" knowledge. *Underdown v. District of Columbia*, App. D.C., 217 A.2d 659 (1966).

Execution of a search warrant before expiration of the 10 day statutory limit was reasonable. *Underdown v. District of Columbia*, App. D.C., 217 A.2d 659 (1966).

Four day lapse to obtain warrant not unreasonable. — A lapse of 4 days between time police observed illegal activities on premises to the time the police made an application for a search warrant based on an affidavit describing the sale of alcoholic beverages on premises without a license was not unreasonable as a matter of law. *Williams v. District of Columbia*, App. D.C., 167 A.2d 893 (1961).

Police officer's incidental discovery under valid warrant not unreasonable. — In searching defendant's premises under a valid search warrant authorizing a search under this section, a police officer's action, when he looked behind a partition and discovered 2 paper bags in the midst of rubble and discovered marijuana, did not constitute an unreasonable search. *United States v. White*, 122 F. Supp. 664 (D.D.C. 1954).

Cited in *District of Columbia v. 313 M St.*, App. D.C., 633 A.2d 820 (1993).

§ 25-130. Purchase, possession or consumption by persons under 21; misrepresentation of age; penalties.

(a) No person who is under 21 years of age shall purchase, attempt to purchase, possess, or drink any alcoholic beverage in the District, except that

a person who is under 21 years of age may temporarily possess an alcoholic beverage if the temporary possession is necessary to perform lawful employment responsibilities.

(b) No person shall falsely represent his or her age, or possess or present as proof of age an identification document which is in any way fraudulent, for the purpose of procuring an alcoholic beverage in the District.

(c) In addition to the penalties provided in § 25-132, any person who violates any provision of this section shall be subject to the following additional penalties:

(1) Upon the first violation, shall have his or her driving privileges in the District suspended for a period of 90 consecutive days;

(2) Upon the second violation, shall have his or her driving privileges in the District suspended for a period of 180 days; and

(3) Upon the third violation and each subsequent violation, shall have his or her driving privileges in the District suspended for a period of 1 year. (Jan. 24, 1934, 48 Stat. 335, ch. 4, § 30; 1973 Ed., § 25-130; Feb. 24, 1987, D.C. Law 6-178, § 2(c), 33 DCR 7654; Sept. 11, 1993, D.C. Law 10-12, § 2(d), 40 DCR 4020; May 24, 1994, D.C. Law 10-122, § 2(j), 41 DCR 1658.)

Section references. — This section is referred to in § 40-302.2.

Cross references. — As to age of majority, see note following § 21-101.

Effect of amendments. — D.C. Law 10-122 rewrote this section.

Emergency act amendments. — For temporary amendment of section, see § 2(d) of the Underage Drinking Emergency Amendment Act of 1994 (D.C. Act 10-236, April 28, 1994, 41 DCR 2601).

Legislative history of Law 6-178. — See note to § 25-121.

Legislative history of Law 10-12. — See note to § 25-148.

Legislative history of Law 10-122. — See note to § 25-130.1.

Penalties. — Given that the language in this section that its penalties are in addition to penalties set forth in § 25-132, the residual misdemeanor penalties in § 25-132 apply to violations of this section. *District of Columbia v. Morrissey*, App. D.C., 668 A.2d 792 (1995).

§ 25-130.1. Delivery, offer, or otherwise making available to persons under 21; penalties.

(a) No person who is not an ABC license holder pursuant to § 25-110 shall, within the District, purchase an alcoholic beverage for the purpose of delivering the alcoholic beverage to a person who is under 21 years of age.

(b) No person who is not an ABC license holder pursuant to § 25-110 shall, within the District, offer, give, provide, or otherwise make available an alcoholic beverage to any person who is under 21 years of age, except when necessary to allow the person who is under 21 years of age to perform lawful employment responsibilities that require the person who is under 21 years of age to have temporary possession of alcoholic beverages, such as the lawful employment responsibilities set forth in § 25-121(j).

(c) Any person who violates any provision of this section shall be fined not more than \$1,000 or imprisoned for not more than 180 days, or both. (Jan. 24, 1934, ch. 4, § 30a, as added May 24, 1994, D.C. Law 10-122, § 2(k), 41 DCR 1658.)

Effect of amendments. — D.C. Law 10-122 added this section.

Legislative history of Law 10-122. — Law 10-122, the “Alcoholic Beverage Control Act and Rules Reform Amendment Act of 1994,” was introduced in Council and assigned Bill No. 10-207, which was referred to the Committee on Consumer and Regulatory Affairs. The

Bill was adopted on first and second readings on February 1, 1994, and March 1, 1994, respectively. Signed by the Mayor on March 21, 1994, it was assigned Act No. 10-214 and transmitted to both Houses of Congress for its review. D.C. Law 10-122 became effective on May 24, 1994.

§ 25-131. Issuance of new permits under Beverage License Act of 1933 forbidden; surrender of permit and refund of fees.

After the date of the approval of this chapter, no permit shall be issued under the Act of Congress entitled An Act to provide revenue for the District of Columbia by the taxation of beverages and for other purposes, approved April 5, 1933, and no permits issued thereunder shall be renewed, but the Mayor is hereby authorized to extend the expiration dates of permits issued under said Act to a date designated by him not to exceed 60 days after the approval of this chapter, upon such terms and conditions, including the payment of such fees as the Mayor may prescribe. Any permittee thereunder may make an application for a license under this chapter and, if said application is approved by the Board, such permittee shall surrender his permit and he shall be allowed a refund of the permit fee prorated as hereinafter provided. Any permittee under said Act of April 5, 1933, may surrender his permit and receive a refund of the permit fee prorated from the date of surrender of such permit to the date of expiration thereof. All such refunds shall be paid from the permanent indefinite appropriation for refunding erroneously paid taxes in the District of Columbia. All permits issued under said Act of April 5, 1933, shall remain in force and effect for the respective periods for which they were issued, unless sooner surrendered. After the approval of this chapter, no taxes shall be collected under § 11 of the Act approved April 5, 1933. (Jan. 24, 1934, 48 Stat. 336, ch. 4, § 31; 1973 Ed., § 25-131; Sept. 29, 1982, D.C. Law 4-157, § 15, 29 DCR 3617; Mar. 8, 1984, D.C. Law 5-51, § 2(b)(10), 30 DCR 5927; Mar. 14, 1985, D.C. Law 5-159, § 25(d), 32 DCR 30.)

Section references. — This section is referred to in § 25-109.

Legislative history of Law 4-157. — See note to § 25-103.

Legislative history of Law 5-51. — See note to § 25-104.

Legislative history of Law 5-159. — See note to § 25-104.

Editor’s notes. — As amended by § 25(d) of D.C. Law 5-159, the word “issued” was probably inadvertently omitted preceding “under said Act”, near the middle of the first sentence.

History of Alcoholic Beverage Control Board. — See note to § 25-104.

Cited in *District of Columbia v. Morrissey*, App. D.C., 668 A.2d 792 (1995).

§ 25-132. Penalty for violation where no specific penalty provided; additional penalty for failure to perform certain required acts; prosecutions.

(a) Any person who violates any of the provisions of this chapter for which no specific penalty is provided, or any of the rules and regulations promulgated

pursuant thereto for which no specific penalty is provided, upon conviction thereof, shall be fined not more than \$1,000 or imprisoned for not more than 1 year, or both.

(b) Any person required to file a return or report or perform any act under the provisions of this chapter who wilfully fails or refuses to file such return or report or perform such act within the time required shall, upon conviction thereof, be fined not more than \$5,000 or imprisoned for not more than 3 years, or both. The penalty provided herein shall be in addition to other penalties provided by this chapter.

(c) Prosecutions for violations of this chapter shall be on information filed in the Superior Court of the District of Columbia by the Corporation Counsel or any of his assistants, except for such violations as are felonies, and prosecutions for such violations as are felonies, shall be by the United States Attorney for the District of Columbia or any of his assistants.

(d) For purposes of this section, the term “person” also includes any officer of a corporation, and any employee of a corporation responsible for the performance of any act under this chapter; any member of a partnership or association, and any employee of a partnership or association responsible for the performance of any act under the provisions of this chapter.

(e) A civil fine may be imposed as an alternative sanction for any infraction of this chapter for which no specific penalty is provided, or any rules or regulations issued under the authority of this chapter, pursuant to subchapters I through III of Chapter 27 of Title 6. Adjudication of any infraction of this chapter shall be pursuant to subchapters I through III of Chapter 27 of Title 6. (Jan. 24, 1934, 48 Stat. 336, ch. 4, § 33; Apr. 1, 1942, 56 Stat. 190, ch. 207, § 1; July 8, 1963, 77 Stat. 77, Pub. L. 88-60, § 1; July 29, 1970, 84 Stat. 570, Pub. L. 91-358, title I, § 155(a); 1973 Ed., § 25-132; July 24, 1982, D.C. Law 4-131, § 301, 29 DCR 2418; Sept. 26, 1984, D.C. Law 5-106, § 3, 31 DCR 3381; Oct. 5, 1985, D.C. Law 6-42, § 455(b), 32 DCR 4450.)

Cross references. — As to Mayor’s authority to issue regulations necessary to carry out D.C. Law 4-131, see § 25-145.

As to conduct of criminal prosecutions, generally, see § 23-101.

Section references. — This section is referred to in §§ 25-108 and 25-132.

Legislative history of Law 4-131. — See note to § 25-140.

Legislative history of Law 5-106. — See note to § 25-121.

Legislative history of Law 6-42. — See note to § 25-127.

Application of Law 6-42. — Section 501(b) of D.C. Law 6-42 provided that the provisions of the act shall apply only to infractions which occur or are discovered by inspection after October 5, 1985.

Imposition of consecutive 120-day sentences for the keeping of whiskey for sale and

selling of whiskey without a license was improper as constituting double punishment for a single offense where defendant had only a single bottle of whiskey which he illegally sold at time of his arrest and there was no proof of keeping of the whiskey for sale independent of the sale itself. *Hicks v. District of Columbia*, 234 A.2d 801 (App. D.C. 1967).

Violations of § 25-130. — Given the language in § 25-130 that its penalties are in addition to penalties set forth in this section, the residual misdemeanor penalties in this section apply to § 25-130 violations. *District of Columbia v. Morrissey*, App. D.C., 668 A.2d 792 (1995).

Cited in *Davenport v. District of Columbia*, App. D.C., 67 A.2d 522 (1949); *Rong Yao Zhou v. Jennifer Mall Restaurant, Inc.*, App. D.C., 534 A.2d 1268 (1987).

§ 25-133. Sale by retailer of beverages on credit prohibited; exceptions.

No holder of a retailer's license, except a retailer's license, class E, shall sell on credit any beverages except beer and light wines. For purposes of this section, the extension of credit by the holder of a class A retailer's license in connection with a sale by such license holder of any beverage through any document, device, or plan intended or adapted for the purpose of establishing credit, except through the use of a credit card as defined in § 25-103(19), shall be considered a sale on credit of such beverage by such license holder. This section shall not prohibit a club from extending credit to its members or the guests of members, or a hotel from extending credit to its registered guests. Nothing in this section shall be construed as prohibiting the holder of a retailer's license, class C/R, C/T, C/N, C/H, C/X, D/R, D/T, D/N, D/H, or D/X from accepting payment by credit card for sales of alcoholic beverages to customers. (Jan. 24, 1934, 48 Stat. 336, ch. 4, § 35; Dec. 8, 1970, 84 Stat. 1394, Pub. L. 91-535, § 6; 1973 Ed., § 25-133; Sept. 29, 1982, D.C. Law 4-157, § 14, 29 DCR 3617; Mar. 7, 1987, D.C. Law 6-217, § 15, 34 DCR 907.)

Cross references. — As to sale of beverages on credit, see §§ 25-119 and 25-120.

Legislative history of Law 4-157. — See note to § 25-103.

Legislative history of Law 6-217. — See note to § 25-103.

Purpose of section. — Prohibition of this section of credit sales of liquor was enacted to

protect the public interest. *Fields v. Hunter*, App. D.C., 368 A.2d 1156 (1977).

Acceptance of postdated check violates section. — Liquor store owner's acceptance of a postdated check for portion of sum due for liquor sold violated this section. *Fields v. Hunter*, App. D.C., 368 A.2d 1156 (1977).

§ 25-134. Containers to be labeled.

No rectified or blended spirits shall be sold unless the container in which it is sold shall bear a legible label firmly affixed thereto stating the nature and percentage of each ingredient therein (except water), the age of each such ingredient, and the alcoholic content of such spirits by volume. (Jan. 24, 1934, 48 Stat. 336, ch. 4, § 36; 1973 Ed., § 25-134.)

§ 25-135. Offenses, rights, penalties, or seizures under National Prohibition Act.

Any offense committed, or any right accrued, or any penalty or obligation incurred, or any seizure or forfeiture made, prior to the effective date of this chapter, under the provisions of the National Prohibition Act, as amended and supplemented, or under any permit or regulation issued thereunder, or under any other provision of law repealed by this chapter, may be prosecuted or enforced in the same manner and with the same effect as if this chapter had not been enacted. (Jan. 24, 1934, 48 Stat. 337, ch. 4, § 37; 1973 Ed., § 25-135.)

References in text. — The National Prohibition Act, referred to near the middle of the section, is the Act of October 28, 1919, 41 Stat. 305, ch. 85.

§ 25-136. Severability.

If any provision of this chapter, or the application thereof to any person or circumstances, is held invalid, the remainder of the chapter, and the application of such provisions to other persons or circumstances, shall not be affected thereby. (Jan. 24, 1934, 48 Stat. 337, ch. 4, § 38; 1973 Ed., § 25-136.)

§ 25-137. Unlawful importation of beverages; exceptions.

(a) It shall be unlawful for anyone, except a public or common carrier or the holder of a manufacturer's, wholesaler's, or retailer's license issued under this chapter, to transport, import, bring, or ship or cause to be transported, imported, brought, or shipped into the District of Columbia from without the District of Columbia any wines, spirits, or beer in a quantity in excess of 1 gallon at any 1 time.

(b) No public or common carrier shall transport or bring into the District of Columbia wine, spirits, or beer in a quantity in excess of 1 quart in any 1 calendar month for delivery to any 1 person in the District of Columbia other than the holder of a manufacturer's, wholesaler's, or retailer's license issued under this chapter.

(c) The provisions of this section shall not apply to bona fide possessors of old stocks who are moving into the District of Columbia, nor to embassies or diplomatic representatives of foreign countries, nor to wines imported for religious or sacramental purposes, nor to wine, spirits, and beer to be delivered to the holder of a manufacturer's, wholesaler's, or retailer's license issued under this chapter.

(d) The penalty for violation of this section shall consist of the forfeiture of the beverages transported, imported, or shipped, or caused to be transported, imported, brought, or shipped in violation of this section, and a fine of not more than \$500 or imprisonment for not more than 6 months.

(e) In addition to other penalties provided in this section, any person who violates the provisions of this section shall also be liable for any tax, penalties and interest as provided for in this chapter. (Jan. 24, 1934, ch. 4, § 39; Aug. 25, 1937, 50 Stat. 803, ch. 766, § 4; Dec. 26, 1967, 81 Stat. 728, Pub. L. 90-223, § 1; 1973 Ed., § 25-137; July 24, 1982, D.C. Law 4-131, § 302, 29 DCR 2418.)

Cross references. — As to transportation, see §§ 25-112 and 25-138.

As to Mayor's authority to issue regulations necessary to carry out D.C. Law 4-131, see § 25-145.

Section references. — This section is referred to in § 25-144.

Legislative history of Law 4-131. — See note to § 25-140.

§ 25-138. Tax on beer.

(a) There shall be levied and collected by the District of Columbia a tax of \$2.79 for every barrel containing not more than 31 gallons and at a like rate for any other quantity or for the fractional parts thereof, on all beer:

(1) Sold by the holder of a manufacturer's or wholesaler's license, except such beer as may have been purchased from a licensee under this chapter, and

except such beer as may be sold to a dealer licensed under the laws of any state or territory of the United States and not licensed under this chapter;

(2) Purchased for resale by the holder of a retailer's license, except such beer as may have been purchased from a licensee under this chapter; or

(3) Brewed or produced by the holder of a brew pub license and transferred for consumption at the holder's restaurant or tavern.

(A) Taxes shall be determined prior to the time that beer is dispensed into a container for consumption. Each holder of a brew pub license shall have a suitable method for measuring tax-determined beer, such as a meter or gauge glass.

(B) If the holder of a brew pub license uses one or more tanks for tax determination:

(i) Taxes shall be determined each time beer is added to a tax-determination tank; and

(ii) The holder of a brew pub license may never simultaneously pump into and out of a tax determination tank.

(C) Beer consumed by employees and visitors at the holder's restaurant or tavern shall be beer on which the tax has been paid or determined.

(a-1) Unless the Council of the District of Columbia shall by regulation prescribe otherwise, the collection and payment of the tax shall be in the following manner:

(1) Each holder of a manufacturer's or wholesaler's license shall, on or before the 15th day of each month, furnish to the Mayor of the District of Columbia, on a form to be prescribed by the Mayor, a statement under oath showing the quantity of beer subject to taxation hereunder sold by him during the preceding calendar month.

(2) No licensee holding a retailer's license shall transport or cause to be transported into the District of Columbia for resale any beer, other than the regular stock on hand in a passenger-carrying marine vessel operating in and beyond the District of Columbia, or a club car or dining car on a railroad operating in and beyond the District of Columbia, for which a retailer's license, class C or D, has been issued under this chapter, unless such licensee has first obtained a permit to do so from the Alcoholic Beverage Control Board. No permit shall issue until the tax imposed by this section shall have been paid for the beer for which the permit is requested. Such a permit shall specifically set forth the quantity, character, and brand or trade name of the beer to be transported and the names and addresses of the seller and of the purchaser. Such a permit shall accompany the beer during its transportation in the District of Columbia to the licensed premises of the retail licensee and shall be exhibited upon the demand of any police officer or duly authorized inspector of the Board. Such a permit shall, immediately upon receipt of beer by the retail licensee, be marked "cancelled" and retained by him.

(3) Each holder of a brew pub license shall, on or before the 15th day of each month, furnish to the Mayor, on a form to be prescribed by the Mayor, a statement under oath showing the quantity of beer subject to taxation hereunder brewed or produced by the holder and transferred for consumption at the holder's restaurant or tavern during the preceding calendar month.

(b) The Council of the District of Columbia is authorized and empowered to prescribe by regulation any other methods or devices or both for the assessment, evidencing of payment, and collection of the taxes imposed by this section in addition to or in lieu of the method hereinbefore set forth whenever, in its judgment, such action is necessary to prevent fraud or evasion.

(c) The taxes imposed hereby, when collected, shall be deposited in the Treasury of the United States to the credit of the District of Columbia. (Jan. 24, 1934, ch. 4, § 40; May 16, 1938, 52 Stat. 376, ch. 223, § 8; May 27, 1949, 63 Stat. 136, ch. 146, title V, § 508; May 18, 1954, 68 Stat. 115, ch. 218, title VIII, § 804; Mar. 31, 1956, 70 Stat. 83, ch. 154, § 305; Sept. 30, 1966, 80 Stat. 855, Pub. L. 89-610, title I, § 101(b); Oct. 31, 1969, 83 Stat. 175, Pub. L. 91-106, title V, § 501(c); 1973 Ed., § 25-138; Sept. 29, 1982, D.C. Law 4-157, § 15, 29 DCR 3617; Mar. 8, 1984, D.C. Law 5-51, § 2(b)(11), 30 DCR 5927; July 25, 1989, D.C. Law 8-17, § 7(b), 36 DCR 4160; Aug. 17, 1991, D.C. Law 9-40, § 2(d), 38 DCR 4974.)

Cross references. — As to rules and regulations, see § 25-107.

As to beverage taxes, see § 25-124.

As to transportation, see §§ 25-112 and 25-137.

As to authorization of Council to change tax rates, see § 47-504.

As to authority of Mayor to make rules and regulations, see § 47-1816.2.

Legislative history of Law 4-157. — See note to § 25-103.

Legislative history of Law 5-51. — See note to § 25-104.

Legislative history of Law 8-17. — See note to § 25-124.

Legislative history of Law 9-40. — See note to § 25-103.

History of Alcoholic Beverage Control Board. — See note to § 25-104.

Unauthorized beer tax regulations. — Regulations of the Council taxing beer in warehouses before it was sold were not authorized. *American Sales Co. v. District of Columbia*, 292 F.2d 751 (D.C. Cir. 1961).

Cited in *Jameson's Liquors, Inc. v. District of Columbia ABC Bd.*, App. D.C., 384 A.2d 412 (1978).

§ 25-139. Place of violation of chapter declared nuisance; injunction and abatement.

(a) Any building, ground, premises, or place where any intoxicating beverage is manufactured, sold, kept for sale, or permitted to be consumed in violation of this chapter is hereby declared to be a nuisance, and may be enjoined and abated as hereinafter provided.

(b) An action to enjoin any nuisance defined in subsection (a) of this section may be brought in the name of the District of Columbia by the Corporation Counsel of the District of Columbia or any of his assistants, in the Civil Branch of the Superior Court of the District of Columbia against any person conducting or maintaining such nuisance or knowingly permitting such nuisance to be conducted or maintained. The rules of the Superior Court of the District of Columbia relating to the granting of an injunction or restraining order shall be applicable with respect to actions brought under this subsection, except that the District as complaining party shall not be required to furnish bond or security. It shall not be necessary for the Court to find the building, ground, premises, or place was being unlawfully used as aforesaid at the time of the hearing, but on finding that the material allegations of the complaint are true,

the Court shall enter an order restraining the defendant from manufacturing, selling, keeping for sale, or permitting to be consumed any alcoholic beverage in violation of this chapter. When an injunction, either temporary or permanent, has been granted it shall be binding on the defendant throughout the District of Columbia. Upon final judgment of the Court ordering such nuisance to be abated, the Court may order that the defendant, or anyone claiming under him, shall not occupy or use, for a period of 1 year thereafter, the building, ground, premises, or place upon which the nuisance existed, but the Court may, in its discretion, permit the defendant to occupy or use the said building, ground, premises, or place, if the defendant shall give bond with sufficient security to be approved by the Court, in the penal and liquidated sum of not less than \$500 nor more than \$1,000, payable to the District of Columbia, and conditioned that intoxicating beverages will not thereafter be manufactured, sold, kept for sale, or permitted to be consumed in or upon the building, grounds, premises, or place in violation of this chapter.

(c) In the case of the violation of any injunction, temporary or permanent, rendered pursuant to the provisions of this section, proceedings for punishment for contempt may be commenced by the Corporation Counsel or any of his assistants, by filing with the Court in the same case in which the injunction was issued a petition under oath setting out the alleged offense constituting the violation and serving a copy of said petition upon the defendant requiring him to appear and answer the same with 10 days from the service thereof. The trial shall be promptly held and may be upon affidavits or either party may demand the production and oral examination of the witnesses. Any person found guilty of contempt under the provisions of this section shall be punished by a fine of not more than \$1,000 or by imprisonment for not more than 12 months, or by both such fine and imprisonment. (Jan. 24, 1934, ch. 4, § 41; June 29, 1953, 67 Stat. 104, ch. 159, § 404(j); July 8, 1963, 77 Stat. 77, Pub. L. 88-60, § 1; July 29, 1970, 84 Stat. 570, Pub. L. 91-358, title I, § 155(a); 1973 Ed., § 25-139.)

§ 25-140. Determination of tax by Mayor; notice; protest; penalty; liability deemed personal debt.

(a) The Mayor shall determine, redetermine, assess, or reassess any tax imposed under this chapter, as follows:

(1) In the case of a fraudulent return or a failure to file a return, whether in good faith or otherwise, the tax may be assessed at any time.

(2) If the tax as imposed by this chapter is determined to be due from any person other than a licensee under this chapter, such tax may be assessed at any time.

(3) In the case of an incorrect return, the tax shall be assessed or reassessed within 5 years after the filing of such return.

(4) If a return required by this chapter is not filed, or if the return when filed is incorrect or insufficient, or if the tax as imposed by this chapter has been determined to be due from a licensee or any other person, the amount of tax due shall be determined by the Mayor from such information as may be

obtainable. Notice of such determination shall be given to the licensee or any person required to file a return or to pay the tax or both file a return and pay the tax. The notice shall give a period of not less than 30 days after such notice is sent within which to file a protest with the Mayor, and show cause or reason why the amount of tax determined to be due should not be paid. If no protest is filed within such 30-day period, the tax due, as determined by the Mayor, shall be final. If a protest is filed within the 30-day period, opportunity for a hearing shall be granted by the Mayor, a final decision thereon shall be made, and notice of such decision, together with a statement of taxes finally determined to be due, shall be sent by registered or certified mail to the last known address of the person liable for the payment of the tax.

(b) Any licensee or other person required to file a return, or to pay the tax or both file a return and pay the tax, who fails to file such return, who fails to file a correct return, or who fails to pay the tax to the District within the time required by this chapter, shall be subject to a penalty of 5% of the tax due for each month or fraction thereof that such failure continues, not to exceed 25% in the aggregate; plus interest at the rate of 1 ½% of such tax for each month or fraction thereof during which such failure continues; but the Mayor may, if he is satisfied that the delay was due to reasonable cause, waive all or any part of the penalty or interest or to waive both all or any part of the penalty and the interest. Unpaid penalties and interest shall be collected in the same manner as the tax imposed by this chapter. The penalty and interest provided for in this section shall be applicable to any tax determined as a deficiency.

(c) The tax imposed by this chapter and interest and penalties thereon shall become, from the time due and payable, a personal debt of the person liable to pay the same to the District. For the purposes of this subsection, the term "person" also includes any officer or former officer of a corporation, and any employee or former employee of a corporation responsible for the payment of the tax; any member or former member of a partnership or association, and any employee or former employee of a partnership or association responsible for the payment of the tax. (Jan. 24, 1934, 48 Stat. 319, § 42, as added July 24, 1982, D.C. Law 4-131, § 303, 29 DCR 2418.)

Section references. — This section is referred to in § 25-143.

Legislative history of Law 4-131. — Law 4-131, the "District of Columbia Tax Enforcement Act of 1982," was introduced in Council and assigned Bill No. 4-257, which was referred

to the Committee on Finance and Revenue. The Bill was adopted on first and second readings on April 27, 1982, and May 11, 1982, respectively. Signed by the Mayor on June 1, 1982, it was assigned Act No. 4-196 and transmitted to both Houses of Congress for its review.

§ 25-141. Collection of tax by Mayor.

The taxes imposed by this chapter and penalties and interest thereon shall be collected by the Mayor in the manner provided by law for the collection of taxes due the District on personal property in force at the time of such collection; and liens for the taxes imposed by this chapter and penalties and interest thereon may be acquired in the same manner that liens for personal property taxes are acquired. If the Mayor believes that the collection of any tax imposed by this chapter will be jeopardized by delay, the Mayor shall, whether

or not the time otherwise prescribed by law for filing the return or for paying such tax has expired, immediately assess such tax, together with all interest and penalties, the assessment of which is provided by law. Such tax, penalties, and interest shall thereupon become immediately due and payable, and immediate notice and demand shall be made by the Mayor for the payment thereof. Upon failure or refusal to pay such tax, penalty, or interest, collection thereof by distraint shall be lawful. (Jan. 24, 1934, 48 Stat. 319, § 43, as added July 24, 1982, D.C. Law 4-131, § 303, 29 DCR 2418.)

Legislative history of Law 4-131. — See note to § 25-140.

§ 25-142. Refund of tax erroneously or illegally collected.

Where any tax has been erroneously or illegally collected by the District, the tax shall be refunded if application under oath is filed with the Mayor for such refund within 3 years from the payment thereof. Such application must be made by the person upon whom such tax was imposed and who has actually paid the tax. Application for a refund as herein provided shall be deemed an application for a revision of tax, penalty, or interest complained of and the Mayor may receive evidence with respect thereto. After making his determination of whether any refund shall be made, the Mayor shall give notice thereof to the applicant. (Jan. 24, 1934, 48 Stat. 319, § 44, as added July 24, 1982, D.C. Law 4-131, § 303, 29 DCR 2418.)

Legislative history of Law 4-131. — See note to § 25-140.

§ 25-143. Judicial review of tax determination or denial of refund claim.

Any person aggrieved by a final determination of tax or by a denial of a claim for refund (other than a refund of tax finally determined in § 25-140) may within 6 months from the date of assessment of the deficiency or from the date of the denial of a claim for refund appeal to the Superior Court of the District of Columbia in the same manner and to the same extent as set forth in §§ 47-3303, 47-3304, 47-3306, 47-3307, and 47-3308. (Jan. 24, 1934, 48 Stat. 319, § 45, as added July 24, 1982, D.C. Law 4-131, § 303, 29 DCR 2418.)

Legislative history of Law 4-131. — See note to § 25-140.

§ 25-144. Seizure and forfeiture of contraband alcoholic beverages and vehicles; vehicles excepted from forfeiture; disposition of seized property.

(a) Notwithstanding the provisions of § 25-129, all alcoholic beverages found in any place in the District at such time and under such circumstances that the taxes levied and imposed by this chapter should have been collected and paid, and on which such taxes have not been paid as required by this

chapter, shall be declared contraband goods and shall be forfeited to the District. The Mayor may seize any such beverages wherever they are found.

(b) In any case where the Mayor has knowledge or reason to suspect that any vehicle is carrying alcoholic beverages or contains any alcoholic beverages in violation of the provisions of § 25-137, the Mayor may stop such vehicle and inspect the same for contraband alcoholic beverages on which the taxes levied and imposed by this chapter have not been paid, the alcoholic beverages and the vehicle shall be declared contraband goods, shall be seized, and shall be forfeited to the District; provided, that the following vehicles shall not be subject to forfeiture under this section:

(1) A vehicle used by any person as a common carrier in the transaction of business as a common carrier, unless it appears that the owner or other person in charge of the vehicle was a consenting party or privy to the violation of this title on account of which the vehicle was seized; or

(2) A vehicle that is subject to seizure and forfeiture under this section by reason of any act committed or omission established by the owner thereof, to have been committed or omitted by any person other than such owner, while such vehicle was unlawfully in the possession of a person other than the owner, in violation of the criminal laws of the United States, the District, or any other state.

(c) All property which is seized under subsection (a) or (b) of this section shall be promptly delivered to the Mayor and placed under seal or removed to a place designated by the Mayor. Such property shall be proceeded against in the Superior Court of the District of Columbia by libel action brought in the name of the District of Columbia by the Corporation Counsel or any of his assistants and shall, unless good cause be shown to the contrary, be forfeited to the District; provided, that such property shall not be subject to replevin, but is deemed to be in the custody of the Mayor subject only to the orders, decrees, and judgments of the court having jurisdiction over the forfeiture proceedings, and; provided, further, that notwithstanding the provisions of this section, whenever such property is subject to seizure and forfeiture on account of failure to comply with the provisions of this title and the Mayor determines that such failure was excusable, the Mayor may return the property to the owner or owners thereof. If the Mayor determines that any property seized under subsection (a) or (b) of this section is liable to perish or become greatly reduced in price or value by keeping such property until the completion of forfeiture proceedings, the Mayor may:

(1) Appraise the property and return the property to the owner thereof upon the owner paying any tax due under this title and giving satisfactory bond in an amount equal to the appraised value to abide the final order, decree, or judgment of the court having jurisdiction over the forfeiture proceedings, and to pay the amount of such appraised value to the Mayor as may be ordered and directed by such court; or

(2) If the owner neglects or refuses to pay such tax and give such bond, sell such property in the manner provided by the Mayor by regulation and the proceeds of the sale of such property, after deducting the reasonable costs of the seizure and sale, shall be paid to the court to abide its final order, decree, or judgment.

(d) After the final order, decree, or judgment is made, forfeited property shall be sold in the same manner as personal property seized for the payment of District taxes and the proceeds of such sale shall be deposited in the General Fund of the District. If there is a bona fide prior lien against such forfeited property, the proceeds of the sale of such property shall be made available, first, for the payment of any tax due under this title and all expenses incident to the seizure, forfeiture, and sale of such property, and, second, for the payment of such lien, and the remainder shall be deposited with the D.C. Treasurer; provided, that no payment of a lien shall be made where the lienor was a consenting party or privy to the violation of this title on account of which the property was seized and forfeited. To the extent necessary, liens against forfeited property shall, on good cause shown by the lienor, be transferred from the property to the proceeds of the sale of the property. (Jan. 24, 1934, 48 Stat. 319, § 46, as added July 24, 1982, D.C. Law 4-131, § 303, 29 DCR 2418.)

Cross references. — As to return of property by Property Clerk, see § 4-157.

Cited in *District of Columbia v. 313 M St.*, App. D.C., 633 A.2d 820 (1993).

Legislative history of Law 4-131. — See note to § 25-140.

§ 25-145. Regulations.

The Mayor shall issue regulations necessary to carry out the provisions of this act. (July 24, 1982, D.C. Law 4-131, § 501, 29 DCR 2418.)

Legislative history of Law 4-131. — See note to § 25-140.

References in text. — “This act,” referred to at the end of the section, is D.C. Law 4-131.

§ 25-146. Severability; existing rights and liabilities; prior offenses.

(a) If any provision of the District of Columbia Tax Enforcement Act of 1982, including any amendment made by the District of Columbia Tax Enforcement Act of 1982, or the application thereof to any person or circumstance, is held invalid, the remainder of the District of Columbia Tax Enforcement Act of 1982, including the remaining amendments, and the application of such provisions to other persons or circumstances shall not be affected thereby.

(b) The repeal or amendment by the District of Columbia Tax Enforcement Act of 1982 of any provision of law shall not affect any act done or any right accrued or accruing under such provision of law before July 24, 1982, or any suit or proceeding had or commenced before July 24, 1982, but all such rights and liabilities under such acts shall continue and may be enforced in the same manner and to the same extent, as if such repeal or amendment had not been made.

(c) All offenses committed, and all penalties incurred, prior to July 24, 1982, under any provisions of law repealed or amended, may be prosecuted and punished in the same manner and with the same effect as if the District of Columbia Tax Enforcement Act of 1982 had not been enacted. (July 24, 1982, D.C. Law 4-131, § 502, 29 DCR 2418.)

Legislative history of Law 4-131. — See note to § 25-140.

References in text. — The “District of Co-

lumbia Tax Enforcement Act of 1982,” referred to throughout this section, is D.C. Law 4-131.

§ 25-147. Warning signs regarding dangers of alcohol consumption during pregnancy.

(a) For the purposes of this section, the term “vendor” means any person who owns or operates a business establishment which sells at retail any alcoholic beverages for consumption either on or off the premises.

(b)(1) All vendors shall have posted in a conspicuous place a sign which reads: “Warning: Drinking alcoholic beverages during pregnancy can cause birth defects”.

(2) If the Board determines that action in addition to that required by paragraph (1) of this subsection is necessary to accomplish the objectives of this chapter, the Board may require additional warnings it considers appropriate.

(c) The Board shall prepare the signs and make them available at no charge to vendors.

(d) The Board shall issue rules and regulations with respect to posting of the signs.

(e)(1) Violations of this section shall be punishable by a civil fine not to exceed \$100.

(2) For purposes of this section, each day of noncompliance shall constitute a separate violation. (Jan. 24, 1934, ch. 4, § 47, as added Nov. 19, 1985, D.C. Law 6-57, § 2, 32 DCR 5722.)

Legislative history of Law 6-57. — Law 6-57, the “Consuming Alcohol During Pregnancy Warning Signs Act of 1985,” was introduced in Council and assigned Bill No. 6-198, which was referred to the Committee on Consumer and Regulatory Affairs. The Bill was

adopted on first and second readings on July 9, 1985, and September 10, 1985, respectively. Signed by the Mayor on September 30, 1985, it was assigned Act No. 6-80 and transmitted to both Houses of Congress for its review.

§ 25-148. Keg registration.

(a) No licensee authorized by the Board to sell wine, beer, or spirits at retail for off-premises consumption shall sell any alcoholic beverage in a keg without having affixed a registration seal on the keg at the time of sale; provided, that if a purchaser takes possession of or purchases a keg at the premises of a wholesale licensee, then the wholesale licensee shall affix a registration seal on the keg. The licensee shall be responsible for affixing a registration seal to each keg container prior to the container leaving the premises of the seller.

(b) For the purposes of this section, the keg “registration seal” shall be defined as any seal, decal, sticker, or other device approved by the Board, which is designed to be affixed to kegs, and which displays a registration number, name of the licensee offering the keg for sale to the consumer, and any other information required by the Board.

(c) Prior to the sale of any alcoholic beverage in the keg, the licensee shall complete a keg declaration of receipt on a form provided by the Board, which shall contain the following information:

- (1) Keg registration seal number;
- (2) The name and address of the purchaser verified by a valid identification document as defined in § 25-121(d)(2);
- (3) The type and registration number of the identification presented by the purchaser;
- (4) A statement signed by the purchaser stating that:
 - (A) The purchaser is 21 years of age or older;
 - (B) The purchaser does not intend to allow persons under 21 years of age to consume any of the alcoholic beverage purchased; and
 - (C) The purchaser will not remove or obliterate the keg registration seal affixed to the keg or allow its removal or obliteration; and
- (5) The specific address or location where the alcoholic beverage in the keg will be consumed and the date or dates on which it will be consumed.

(d) Upon return of a registered keg from a consumer, the licensee shall remove or obliterate the keg registration seal on the keg and note that removal or obliteration on the keg declaration of receipt form to be retained by the licensee on the licensed premises. If a keg is made of disposable packaging that does not have to be returned by the consumer to the licensee, the licensee shall indicate on the keg declaration of receipt form that the keg is disposable.

(e) Licensees shall maintain the keg declaration of receipt form on the licensed premises for a period of 2 years following the date of purchase. These records shall be open at all reasonable times for inspection by the Board or its authorized representatives, and other law enforcement officers.

(f) The requirements of this section shall not apply to the wholesale sale of any keg between a wholesaler and a retailer or to the import of any keg by a retailer pursuant to the laws and regulations of the District. (Jan. 24, 1934, ch. 4, § 48, as added Sept. 11, 1993, D.C. Law 10-12, § 2(e), 40 DCR 4020, and May 24, 1994, D.C. Law 10-122, § 2(l), 41 DCR 1658.)

Effect of amendments. — D.C. Law 10-122 added this section.

Emergency act amendments. — For temporary addition of section, see § 2(e) of the Underage Drinking Emergency Amendment Act of 1993 (D.C. Act 10-24, May 19, 1993, 40 DCR 3405), § 2(e) of the Underage Drinking Congressional Recess Emergency Amendment Act of 1993 (D.C. Act 10-72, July 29, 1993, 40 DCR 5820) and § 2(e) of the Underage Drinking Emergency Amendment Act of 1994 (D.C. Act 10-236, April 28, 1994, 41 DCR 2601).

Legislative history of Law 10-12. — Law 10-12, the “Underage Drinking Temporary Amendment Act of 1993,” was introduced in Council and assigned Bill No. 10-261. The Bill was adopted on first and second readings on May 4, 1993, and June 1, 1993, respectively. Signed by the Mayor on June 16, 1993, it was assigned Act No. 10-40 and transmitted to both Houses of Congress for its review. D.C. Law 10-12 became effective on September 11, 1993.

Legislative history of Law 10-122. — See note to § 25-130.1.

TITLE 26. BANKS AND OTHER FINANCIAL INSTITUTIONS.

Chapter

- 1. Banking Institutions in General..... §§ 26-101 to 26-111.
- 2. Joint Accounts; Adverse Claimants; Trust Accounts.. §§ 26-201 to 26-204.
- 3. Common Trust Funds..... §§ 26-301 to 26-304.
- 4. Trust, Loan, Mortgage, Safe Deposit and Title Corporations..... §§ 26-401 to 26-436.
- 5. Building Associations..... §§ 26-501 to 26-517.
- 6. Credit Unions..... §§ 26-601 to 26-604.
- 7. Money Lenders; Licenses..... §§ 26-701 to 26-712.
- 8. Regional Interstate Banking..... §§ 26-801 to 26-813.
- 9. Savings and Loan Acquisition..... §§ 26-901 to 26-917.

CHAPTER 1. BANKING INSTITUTIONS IN GENERAL.

Sec.	Sec.
26-101. Supervision by Comptroller of Currency — Required reports; power to take possession of bank or company.	26-104. Liability of shareholders — Individual responsibility; applicable federal provisions.
26-102. Same — Examinations; applicable federal provisions; establishment and maintenance of reserves.	26-105. Same — Termination.
26-103. Banking businesses to be organized under local or federal provisions; approval of Superintendent of Banking and Financial Institutions required; liquidation of solvent institutions; discontinuance of operation; violations; establishment of international banking facility.	26-106. Declaration of dividends.
	26-107. Restriction on use of words “bank” and “trust company”; violations.
	26-108. Making or repeating false statements.
	26-109. Applicability of provisions on federal reserve banks to nonmember banks.
	26-110. Authority of notaries public associated with corporations.
	26-111. Utility bill payments services.

§ 26-101. Supervision by Comptroller of Currency — Required reports; power to take possession of bank or company.

Except as provided in the District of Columbia Regional Interstate Banking Act of 1985 Amendments Act of 1985, all savings banks, or savings companies, or trust companies, or other banking institutions, organized under authority of any act of Congress to do business in the District of Columbia, or organized by virtue of the laws of any of the states of this Union, and having an office or banking house located within the District of Columbia where deposits or savings are received, shall be, and are hereby, required to make to the Comptroller of the Currency and to publish all the reports which national banking associations are required to make and publish under the provisions of §§ 161, 163, and 164 of Title 12, United States Code, and shall be subject to the same penalties for failure to make such reports as are therein provided, which penalties may be collected by suit before the United States District Court for

the District of Columbia. And the Comptroller shall have power, when in his opinion it is necessary, to take possession of any such bank or company, for the reasons and in the manner and to the same extent as are provided in the laws of the United States with respect to national banks; provided, however, the banking institutions having office or banking houses in foreign countries as well as in the District of Columbia shall only be required to make and publish the reports provided for in this section semiannually; and provided further, that all publications authorized or required by § 161 of Title 12, United States Code, and all other publications authorized or required by existing law to be made in the District of Columbia, shall be printed in 1 or more daily newspapers of general circulation, published in the City of Washington. (Mar. 3, 1901, 31 Stat. 1189, ch. 854, § 713; June 30, 1902, 32 Stat. 534, ch. 1329; June 25, 1906, 34 Stat. 458, ch. 3533; Mar. 4, 1933, 47 Stat. 1566, ch. 274, § 2; June 25, 1936, 49 Stat. 1921, ch. 804; June 25, 1948, 62 Stat. 991, ch. 646, § 32(b); May 24, 1949, 63 Stat. 107, ch. 139, § 127; 1973 Ed., § 26-101; Nov. 23, 1985, D.C. Law 6-63, § 106(a)(4), as added Apr. 11, 1986, D.C. Law 6-107, § 2(k), 33 DCR 1168.)

Cross references. — As to suits against national banking associations applying to this section, see § 26-104.

As to trust or joint deposits, accounts, or safety deposit boxes, see §§ 26-201 to 26-204.

As to forming trust corporations, see §§ 26-401 to 26-436.

As to credit unions, see §§ 26-601 to 26-604.

As to exemptions from operation of money lenders law, see § 26-710.

As to payment of checks or other instruments more than six months after its date, see §§ 28:3-501 and 28:4-404.

As to bank's liability as a forwarding agent, see § 28:4-202.

As to damages for mistake or error in paying instruments, see § 28:4-202.

As to payment of forged or altered instrument, see § 28:4-406.

As to procedure for amending charter, see § 29-238.

As to formal requisites for conveyances of real estate, see § 45-502.

As to excise and license taxes, see §§ 47-2501 to 47-2508.

As to personal money order businesses, see §§ 47-3101 to 47-3117.

Section references. — This section is referred to in §§ 26-102, 26-104, 26-802.1, 26-809.1, and 29-105.

Legislative history of Law 6-107. — Law 6-107, the "District of Columbia Regional Interstate Banking Act of 1985," was introduced in Council and assigned Bill No. 6-276, which was referred to the Committee on Housing and Economic Development. The Bill was adopted on first and second readings on January 14, 1986 and January 28, 1986, respectively. Signed by the Mayor on February 14, 1986, it

was assigned Act No. 6-136 and transmitted to both Houses of Congress for its review.

References in text. — The "District of Columbia Regional Interstate Banking Act of 1985 Amendments Act of 1985," referred to near the beginning of the section, is D.C. Law 6-107.

Section 163 of Title 12, United States Code, referred to near the middle of the first sentence of this section, was repealed by the Act of Sept. 8, 1959, 73 Stat. 466, Pub. L. 86-230, § 22(a).

Transfer of functions. — Pursuant to Reorganization Plan No. 3 of 1992, effective January 20, 1993, unless another date was designated by the Mayor under Sec. V of the Plan, the D.C. Office of Banking and Financial Institutions ("OBFI") is hereby transferred from the Deputy Mayor for Economic Development ("DMED") control center to a separate OBFI control center/responsibility center. OBFI will continue to be administered by the Superintendent and will remain a part of the economic development cluster reporting to the Mayor.

This chapter incorporates all of the United States Bank Acts which have to do with the administration of insolvent banks and gives to the Comptroller the same control and management as in the case of national banks. *Hamilton v. Offutt*, 78 F.2d 735 (D.C. Cir.), cert. denied, 296 U.S. 592, 56 S. Ct. 121, 80 L. Ed. 419 (1935).

Foreign bank submitted itself to this section where it established a banking house in the District of Columbia. *Washington Loan & Trust Co. v. Allman*, 70 F.2d 282 (D.C. Cir.), cert. denied, 292 U.S. 649, 54 S. Ct. 859, 78 L. Ed. 1499 (1934).

Law determining existence and duration of liability. — Although bank stockhold-

ers' liability under the state law may be enforced in the District of Columbia by a receiver appointed by the Comptroller, both the existence and the duration of the liability must be determined by the law of the state of the bank's incorporation. *Moran v. Cobb*, 120 F.2d 16 (D.C. Cir. 1941).

The liquidation of a bank organized under West Virginia law and doing business solely in the District of Columbia was governed by this chapter, and not by the law of West Virginia. *Parsons v. Barry*, 59 F. Supp. 221 (D.D.C. 1944), *aff'd sub nom. Cooper v. Parsons*, 148 F.2d 21 (D.C. Cir.), *cert. denied*, 326 U.S. 726, 66 S. Ct. 32, 90 L. Ed. 431, (1945).

Comptroller's determination is conclusive. — The determination of the Comptroller as to the necessity for assessments is conclusive. *Harper v. Moran*, 76 F.2d 980 (D.C. Cir.), *cert. denied*, 296 U.S. 592, 56 S. Ct. 104, 80 L. Ed. 419 (1935).

Court will not substitute for Comptroller's judgment. — Where the Comptroller has held a bank to be insolvent and has appointed receiver for it, the court will not substitute its judgment for the judgment of the Comptroller, unless it appears by convincing proof that the

Comptroller's action is plainly arbitrary, and made in bad faith. *United States Sav. Bank v. Morgenthau*, 85 F.2d 811 (D.C. Cir.), *cert. denied*, 299 U.S. 605, 57 S. Ct. 232, 81 L. Ed. 446 (1936).

Where the Comptroller was acting within his statutory authority in holding that the plan of reorganization proposed by the appellant was not fair and equitable as to the depositors and other creditors of the bank, and that it was not in the public interest, and where the Comptroller was right in refusing to adopt the appellant's proposed plan, his action in this behalf was not arbitrary or capricious. *Cooper v. Woodin*, 72 F.2d 179 (D.C. Cir. 1934).

Liability of directors. — The directors of a bank were not liable personally for deposits made after the expiration of the charter, where the bank continued business. *Thompson v. Park Sav. Bank*, 77 F.2d 955 (D.C. Cir.), *cert. denied*, 296 U.S. 592, 56 S. Ct. 105, 80 L. Ed. 419, 305 U.S. 606, 56 S. Ct. 105, 83 L. Ed. 391 (1935).

Liability of stockholders. — This section does not impose double liability on stockholders where the state laws impose none. *Hamilton v. Offutt*, 78 F.2d 735 (D.C. Cir.), *cert. denied*, 296 U.S. 592, 56 S. Ct. 121, 80 L. Ed. 419 (1935).

§ 26-102. Same — Examinations; applicable federal provisions; establishment and maintenance of reserves.

(a) The Comptroller of the Currency, in addition to the powers now conferred upon him by law for the examination of national banks, is hereby further authorized, whenever he may deem it advisable, to cause examination to be made into the condition of any bank mentioned in § 26-101. The expense of such examination shall be paid in the manner provided by § 482 of Title 12, United States Code, relating to the examination of national banks.

(b) The provisions of § 84 of Title 12, United States Code, are hereby extended to apply to all banks and trust companies doing business in the District of Columbia.

(c) Each bank and trust company doing business in the District of Columbia and not a member of the Federal Reserve System shall within 6 months from March 4, 1933, establish and maintain reserves on the same basis and subject to the same conditions as may by law on March 4, 1933, or thereafter be prescribed for national banks located in the District of Columbia, except that such reserves shall be established and maintained at such agency or agencies which shall have the approval of the Comptroller of the Currency; provided, however:

(1) That the required reserves carried by such bank or trust company with an agency or agencies may, under the regulations and subject to such penalties as may be prescribed by the Comptroller of the Currency, be checked against and withdrawn by such bank or trust company for the purpose of meeting existing liabilities; and

(2) That no such bank or trust company shall at any time make new loans or shall pay any dividends unless and until the total reserves required by law shall be fully restored.

(d) After April 11, 1986, subsection (c) of this section shall not apply to banks which are not national banks. (Mar. 3, 1901, 31 Stat. 1303, ch. 854, § 714; June 25, 1906, 34 Stat. 458, ch. 3533; Mar. 4, 1933, 47 Stat. 1566, ch. 274, § 3; 1973 Ed., § 26-102; Nov. 23, 1985, D.C. Law 6-63, § 106(a)(5), as added Apr. 11, 1986, D.C. Law 6-107, § 2(k), 33 DCR 1168.)

Cross references. — As to suits against national banking associations applying to this section, see § 26-104.

As to trust companies, see §§ 26-401 to 26-413.

As to examination of building and homestead associations, see § 26-504.

As to credit unions, see §§ 26-601 to 26-604.

Section references. — This section is referred to in § 26-809.1.

Legislative history of Law 6-107. — See note to § 26-101.

Foreign bank governed by section. — Where an Alabama bank established a banking house in the District of Columbia, and all of its officers and directors and substantially all of its stockholders resided in the District, and where all meetings of its stockholders and directors

and all assets and records were kept in the District, the bank was governed by this section. *Thompson v. Park Sav. Bank*, 77 F.2d 955 (D.C. Cir.), cert. denied, 296 U.S. 592, 56 S. Ct. 105, 80 L. Ed. 419, 305 U.S. 606, 56 S. Ct. 105, 83 L. Ed. 391 (1935).

Comptroller's action not arbitrary or capricious. — Where the Comptroller was acting within his statutory authority in holding that the plan of reorganization proposed by the appellant was not fair and equitable as to the depositors and other creditors of the bank, and that it was not in the public interest, and where the Comptroller was right in refusing to adopt the appellant's proposed plan, his action in this behalf was not arbitrary or capricious. *Cooper v. Woodin*, 72 F.2d 179 (D.C. Cir. 1934).

§ 26-103. Banking businesses to be organized under local or federal provisions; approval of Superintendent of Banking and Financial Institutions required; liquidation of solvent institutions; discontinuance of operation; violations; establishment of international banking facility.

(a) No banking business shall be done in the District of Columbia except by corporations organized in accordance with the provisions of this Code, as amended, or by national banking associations organized in accordance with the laws of the United States, except that this subsection shall not apply to:

(1) Corporations engaged in and doing a banking business on March 4, 1933;

(2) Individuals, partnerships, associations, or corporations primarily engaged as brokers in buying, selling, exchanging, and/or otherwise dealing in stocks, bonds, and/or other securities, for the account of others, and incidentally thereto conducts banking transactions; and

(3) Individuals, partnerships, associations, or corporations not doing a bank-of-deposit business.

(b) No corporation shall engage in or do the business of a bank of deposit or a fiduciary business in the District of Columbia nor shall any branch be established to carry on any phase of such banking or fiduciary business in the District of Columbia until the approval and consent of the Superintendent of Banking and Financial Institutions is secured. The term "branch" as used in

this section shall be held to include any branch bank, branch office, branch agency, additional office, or any place of business located in the District of Columbia, at which deposits are received, or checks paid, or money lent, or at which the public is served or any phase of business conducted by the parent institution.

(c) No building association, incorporated or unincorporated, shall do a building association business or maintain any office in the District of Columbia until it shall have secured the approval and consent of the Superintendent of Banking and Financial Institutions; and the Superintendent of Banking and Financial Institutions shall not give consent or approval to any building association to maintain any office or place of business in the District of Columbia, other than a foreign association which qualifies for a certificate of authority under § 26-506, where such association is not incorporated under the laws of the District of Columbia in accordance with Chapter 5 of this title, except that this subsection shall not apply to associations, incorporated or unincorporated, engaged in and doing a building-association business on March 4, 1933.

(d) Except as provided in the District of Columbia Regional Interstate Banking Act of 1985 Amendments Act of 1985, any solvent financial institution in the District of Columbia under the supervision of the Comptroller of the Currency may go into liquidation and discontinue business by the vote of its shareholders owning two-thirds of its stock. Whenever a vote is taken to go into liquidation it shall be the duty of the board of directors to cause notice of this fact to be certified, under the seal of the institution, by its president, secretary, or cashier to the Comptroller of the Currency, and publication thereof to be made for a period of 2 weeks in a newspaper published in the District of Columbia, that the institution has discontinued business and is winding up its affairs, and notifying its creditors to present claims against the institution for payment. The shareholders shall at the time of going into liquidation elect a committee or liquidating agent who shall liquidate the institution. No institution which has gone into voluntary liquidation shall be permitted to resume business but until its liquidation is complete shall remain a legal corporation or association for the purpose of suing or being sued. The liquidating agent shall give satisfactory surety bond to the board of directors of the institution and shall annually, on request of the Comptroller of the Currency, render such reports to the Comptroller as he shall require. Any such institution in liquidation may be examined by the Comptroller of the Currency who, if he finds such institution insolvent, may appoint a receiver and wind up its affairs in the same manner as provided by law for national banking associations.

(e) If any financial institution under the supervision of the Comptroller of the Currency, which has not gone into liquidation and for which a receiver has not already been appointed for other lawful cause, shall discontinue its operations for a period of 60 days, the Comptroller of the Currency may, if he deems it advisable, appoint a receiver for such institution.

(f) Any financial institution over which the Comptroller of the Currency has or had supervision which prior to March 4, 1933, had in any manner ceased to do a banking business shall not resume such banking business and shall

advise the Comptroller of the Currency when its business has been fully liquidated, whereupon by operation of this section its charter is terminated. Such financial institution may in the discretion of the Comptroller of the Currency be subject to all provisions of subsection (d) of this section.

(g) Any person, or corporation or any director, officer, employee, agent, or other person who participates in the conduct of affairs of the person or corporation that violates any of the provisions of this section shall be punished by:

- (1) A fine not less than \$1,000;
- (2) Imprisonment not exceeding 1 year; or
- (3) Both a fine not less than \$1,000 and imprisonment not exceeding 1 year.

(h) No international banking facility shall be established in the District of Columbia until approval and consent of the Comptroller of the Currency is secured. For the purposes of this subsection the term “international banking facility” shall have the same meaning as defined in § 204.8 (a) (1) of Regulation D of the Board of Governors of the Federal Reserve System, effective December 3, 1981 (12 CFR 204.8 (a) (1)). (Apr. 26, 1922, 42 Stat. 500, ch. 147; Mar. 4, 1933, 47 Stat. 1564, ch. 274, § 1; Sept. 15, 1951, 65 Stat. 324, ch. 404, § 3; 1973 Ed., § 26-103; Sept. 17, 1982, D.C. Law 4-150, § 301, 29 DCR 3377; Nov. 23, 1985, D.C. Law 6-63, § 106(b), as added Apr. 11, 1986, D.C. Law 6-107, § 2(k), 33 DCR 1168; Aug. 17, 1991, D.C. Law 9-42, § 3, 38 DCR 4981.)

Cross references. — As to suits against national banking associations applying to this section, see § 26-104.

As to trust companies, see §§ 26-401 to 26-413.

Section references. — This section is referred to in §§ 26-802.1 and 26-804.

Effect of amendments. — D.C. Law 10-68 amended the introductory language of § 3 of D.C. Law 9-42 without any effect on the text of the codification.

Temporary amendment of section. — Section 3 of D.C. Law 8-260 amended (a) to read as follows:

“(a) Any person or corporation or any director, officer, employee, agent, or other person who participates in the conduct of affairs of the person or corporation that violates any of the provisions of this section shall be punished by:

- (1) A fine not less than \$1,000;
- (2) Imprisonment not exceeding 1 year; or
- (3) Both a fine not less than \$1,000 and imprisonment not exceeding 1 year.”

Section 5(b) of D.C. Law 8-260 provided that the act shall expire on the 225th day of its having taken effect or upon the effective date of the District of Columbia Interstate Banking Act of 1985 Amendment Act of 1991, whichever occurs first.

Legislative history of Law 4-150. — Law 4-150, the “International Banking Facilities Tax, District of Columbia Redevelopment Act of

1945 Amendment, and Cable Television Communications Act of 1981 Technical Clarification Amendment Act of 1982,” was introduced in Council and assigned Bill No. 4-360, which was referred to the Committee on Finance and Revenue. The Bill was adopted on first and second readings on June 22, 1982 and July 6, 1982, respectively. Signed by the Mayor on July 21, 1982, it was assigned Act No. 4-221 and transmitted to both Houses of Congress for its review.

Legislative history of Law 6-107. — See note to § 26-101.

Legislative history of Law 8-260. — Law 8-260, the “District of Columbia Interstate Banking Act of 1985 Amendment Temporary Act of 1990,” was introduced in Council and assigned Bill No. 8-735. The Bill was adopted on first and second readings on December 18, 1990, and February 5, 1991, respectively. Signed by the Mayor on February 22, 1991, it was assigned Act No. 8-345 and transmitted to both Houses of Congress for its review.

Legislative history of Law 9-42. — Law 9-42, the “District of Columbia Interstate Banking Act of 1985 Amendment Act of 1991,” was introduced in Council and assigned Bill No. 9-37, which was referred to the Committee on Economic Development. The Bill was adopted on first and second readings on June 4, 1991, and July 2, 1991, respectively. Signed by the Mayor on July 24, 1991, it was assigned Act

No. 9-79 and transmitted to both Houses of Congress for its review.

Legislative history of Law 10-68. — Law 10-68, the “Technical Amendments Act of 1993,” was introduced in Council and assigned Bill No. 10-166, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on June 29, 1993, and July 13, 1993, respectively. Signed by the Mayor on August 23, 1993, it was assigned Act No. 10-107 and transmitted to both Houses of Congress for its review. D.C. Law 10-68 became effective on February 5, 1994.

References in text. — The “District of Columbia Regional Interstate Banking Act of 1985 Amendments Act of 1985,” referred to near the beginning of subsection (d), is D.C. Law 6-107.

Application of Law 4-150. — Section

404(a) of D.C. Law 4-150 provided that the provisions of the act shall apply retroactively to international banking facilities in the District of Columbia after December 2, 1981.

Mayor authorized to issue regulations. — Section 401 of D.C. Law 4-150 provided that the Mayor shall issue regulations necessary to carry out the provisions of the act.

Determination of law governing liability. — In the absence of the words creating the liability claimed, or the finding by necessary implication that the section plainly and convincingly adopts the national banking law of double liability, the law of Virginia, as the place where the bank was created, would govern in measuring the liability of the appellees as stockholders. *Hamilton v. Offutt*, 78 F.2d 735 (D.C. Cir.), cert. denied, 296 U.S. 592, 56 S. Ct. 121, 80 L. Ed. 419 (1935).

§ 26-104. Liability of shareholders — Individual responsibility; applicable federal provisions.

(a) The shareholders, on March 4, 1933, of every savings bank or savings company other than building associations organized under authority of any act of Congress to do business in the District of Columbia, and of every banking institution organized by virtue of the laws of any of the states of this Union to do or doing a banking business in the District of Columbia, shall be held individually responsible, equally and ratably, and not one for another for all contracts, debts, and engagements of such savings bank, savings company, or banking institution, entered into or incurred subsequent to March 4, 1933, to the extent of the amount of their stock therein at the par value thereof, in addition to the amount invested in such shares. The words “entered into or incurred” as used in this section, shall be held to include any extension or renewal of any contracts, debt, and engagement renewed or extended after March 4, 1933.

(b) The provisions of §§ 55, 62, 65, 67, 191 to 194, 197, and 198 to 200 of Title 12, United States Code, are extended to apply to any bank, savings bank, or trust company organized, hereafter organized, or doing a banking business in the District of Columbia and to the shareholders of such institutions, except as limited by the provisions of subsection (a) of this section; provided, however, that the provisions of § 26-101 shall not be construed to be repealed by this section but shall have application to the banks, savings banks, savings companies, other than building associations, and trust companies embraced within this section; provided, further, that the District of Columbia Regional Interstate Banking Act of 1985 Amendments Act of 1985 shall apply to banks which are not national banks.

(c) That portion of § 1348 of Title 28, United States Code, as amended, applying to suits against national banking associations shall be extended and shall apply to all actions arising under the provisions of this section. (Mar. 4, 1933, 47 Stat. 1566, ch. 274, § 4; Feb. 16, 1934, 48 Stat. 352, ch. 14, § 1; 1973 Ed., § 26-104; Nov. 23, 1985, D.C. Law 6-63, § 106(c)(1), as added Apr. 11, 1986, D.C. Law 6-107, § 2(k), 33 DCR 1168.)

Cross references. — As to limitation on liability of shareholders, see § 26-105.

As to stockholder's liability in trust, loan, mortgage, safe deposit, and title corporations, see § 26-422.

Section references. — This section is referred to in §§ 26-105 and 26-809.1.

Legislative history of Law 6-107. — See note to § 26-101.

References in text. — Section 65 of Title 12, United States Code, referred to in subsection (b) of this section, was repealed by the Act of Sept. 8, 1959, 73 Stat. 457, Pub. L. 86-230, § 8.

The "District of Columbia Regional Interstate Banking Act of 1985 Amendments Act of 1985," referred to in subsection (b), is D.C. Law 6-107.

Stockholder's liability prior to enactment of section. — Where there was, at the time, no statute in the District creating double liability in a stockholder of a foreign bank doing business exclusively in the District, the liability of the stockholder was determined by the charter of incorporation and laws of the state in which incorporation is had. *Hamilton v. Bergling*, 85 F.2d 249 (D.C. Cir. 1936).

§ 26-105. Same — Termination.

The additional liability imposed by § 26-104 upon the shareholders of savings banks, savings companies, and banking institutions and the additional liability imposed by § 26-422 upon the shareholders of trust companies, shall cease to apply on July 1, 1937, with respect to such savings banks, savings companies, banking institutions, and trust companies which shall be transacting business on such date; provided, that not less than 6 months prior to such date, the savings bank, savings company, banking institution, or trust company, desiring to take advantage hereof, shall have caused notice of such prospective termination of liability to be published in a newspaper published in the District of Columbia and having general circulation therein. In the event of failure to give such notice as and when above provided, a termination of such additional liability may thereafter be accomplished as of the date 6 months subsequent to publication in the manner above provided. (Aug. 23, 1935, 49 Stat. 720, ch. 614, § 337; 1973 Ed., § 26-105.)

Cross references. — As to trust companies, see §§ 26-401 to 26-413.

Section references. — This section is referred to in § 26-809.1.

§ 26-106. Declaration of dividends.

Each such savings bank, savings company, banking institution, and trust company shall, before the declaration of a dividend on its shares of common stock, carry not less than one-tenth part of its net profits of the preceding half year to its surplus fund until the same shall equal the amount of its common stock; provided, that for the purposes of this section, any amounts paid into a fund for the retirement of any preferred stock or debentures of any such savings bank, savings company, banking institution, or trust company, out of its net earnings for such half-year period shall be deemed to be an addition to its surplus if, upon the retirement of such preferred stock or debentures, the amount so paid into such retirement fund for such period may then properly be carried to surplus. In any such case the savings bank, savings company, banking institution, or trust company shall be obligated to transfer to surplus the amount so paid into such retirement fund for such period, on account of the preferred stock or debentures as such stock or debentures are retired. (Aug. 23, 1935, 49 Stat. 720, ch. 614, § 337; 1973 Ed., § 26-106.)

Cross references. — As to trust companies, see §§ 26-401 to 26-413.

Section references. — This section is referred to in § 26-809.1.

§ 26-107. Restriction on use of words “bank” and “trust company”; violations.

(a) No corporation, association, partnership, or individual shall carry on any business in the District of Columbia under any name or title containing the word “bank” or the words “trust company” unless:

(1) The business is being carried on under the name or title on March 4, 1933;

(2) The business is carried on under the supervision of the Comptroller of the Currency and the name or title is approved by the Comptroller of the Currency; or

(3) The business is carried on under the supervision of the Superintendent of Banking and Financial Institutions and the name or title is approved by the Superintendent of Banking and Financial Institutions.

(b) Any individual who, or corporation, association, or partnership which, violates any of the provisions of this section, and any officer of any such corporation or association and any officer or member of any such partnership, who assents to any such violation, shall, upon conviction thereof, be fined not more than \$5,000. (Mar. 4, 1933, 47 Stat. 1567, ch. 274, § 6; 1973 Ed., § 26-107; Nov. 23, 1985, D.C. Law 6-63, § 106(c)(2), as added Apr. 11, 1986, D.C. Law 6-107, § 2(k), 33 DCR 1168; Apr. 30, 1988, D.C. Law 7-104, § 42, 35 DCR 147.)

Cross references. — As to suits against national banking associations applying to this section, see § 26-104.

As to trust companies, see §§ 26-401 to 26-413.

Section references. — This section is referred to in § 26-809.1.

Legislative history of Law 6-107. — See note to § 26-101.

Legislative history of Law 7-104. — Law

7-104, the “Technical Amendment Act of 1987,” was introduced in Council and assigned Bill No. 7-346, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on November 24, 1987, and December 8, 1987, respectively. Signed by the Mayor on December 22, 1987, it was assigned Act No. 7-124 and transmitted to both Houses of Congress for its review.

§ 26-108. Making or repeating false statements.

Any person who maliciously makes or repeats to, or in the hearing of, or under such circumstances that it becomes known to, any other person, any false statement imputing insolvency or unsound financial condition to any bank, trust company, or building and loan association in the District of Columbia or tending to cause a general withdrawal of deposits or funds from any such institution, shall, upon conviction thereof, be fined not more than \$5,000 or imprisoned not more than 5 years, or both; provided, that the truth of said statement, established by the maker thereof, shall be a complete defense in any prosecution under the provisions of this section. (Mar. 4, 1933, 47 Stat. 1567, ch. 274, § 7; 1973 Ed., § 26-108.)

Cross references. — As to suits against national banking associations applying to this section, see § 26-104.

As to trust companies, see §§ 26-401 to 26-413.

Section references. — This section is referred to in § 26-809.1.

§ 26-109. Applicability of provisions on federal reserve banks to nonmember banks.

All acts prohibited by the provisions of § 501 of Title 12 and §§ 334, 656, 1004, and 1005 of Title 18, United States Code, as amended, and §§ 375, 375a, 376, and 503 of Title 12, and §§ 212, 213, 214, 215, 655, 1005, 1014, 1906, and 1909 of Title 18, United States Code, as amended, in the case of federal reserve banks or member banks thereof, or of directors, officers, or employees of such banks, are likewise prohibited, respectively, in the case of banks in the District of Columbia which are not members of a federal reserve bank, or of directors, officers, or employees of such banks, and shall be punishable by the respective penalties provided in such section; provided, that the District of Columbia Regional Interstate Banking Act of 1985 Amendments Act of 1985 shall apply to banks which are not national banks. (Mar. 4, 1933, 47 Stat. 1568, ch. 274, § 8; 1973 Ed., § 26-109; Nov. 23, 1985, D.C. Law 6-63, § 106(c)(3), as added Apr. 11, 1986, D.C. Law 6-107, § 2(k), 33 DCR 1168.)

Cross references. — As to suits against national banking associations applying to this section, see § 26-104.

Section references. — This section is referred to in § 26-809.1.

Legislative history of Law 6-107. — See note to § 26-101.

References in text. — The “District of Columbia Regional Interstate Banking Act of 1985 Amendments Act of 1985,” referred to in the proviso, is D.C. Law 6-107.

§ 26-110. Authority of notaries public associated with corporations.

It shall be lawful for any notary public who is a stockholder, director, officer, or employee of a bank, trust company, or other corporation to take the acknowledgment of any party to any written instrument executed to or by such corporation, or to administer an oath to any other stockholder, director, officer, employee, or agent of such corporation, or to protest for nonacceptance or nonpayment drafts, checks, notes, acceptances, or other negotiable instruments which may be owned or held for collection by such corporation; provided, that it shall be unlawful for any notary public to take the acknowledgment of an instrument executed by or to bank or corporation of which he is a stockholder, director, officer, or employee, where such notary is a party to such instrument, either individually or as a representative of such corporation, or to protest any negotiable instrument owned or held for collection by such corporation, where such notary is individually a party to such instrument; provided further, that it shall be unlawful for any notary public to take the oath of an officer or director of any bank or trust company of which he is an officer, or to take an oath of any person verifying a report of such bank or trust company to the Comptroller of the Currency or the Superintendent of Banking

and Financial Institutions, whichever is appropriate. (Apr. 5, 1939, 53 Stat. 567, ch. 37, § 5; 1973 Ed., § 26-110; Nov. 23, 1985, D.C. Law 6-63, § 106(d), as added Apr. 11, 1986, D.C. Law 6-107, § 2(k), 33 DCR 1168.)

Cross references. — As to trust companies, see §§ 26-401 to 26-413.

Section references. — This section is referred to in § 26-809.1.

Legislative history of Law 6-107. — See note to § 26-101.

§ 26-111. Utility bill payments services.

(a) Any financial institution that offers utility bill payment services in the District of Columbia shall not charge any consumer a fee for processing a utility bill payment. The requirements of this section shall apply to any financial institution whose deposits or shares are insured by the Federal Deposit Insurance Corporation, the Federal Savings and Loan Insurance Corporation, or the National Credit Union Share Insurance Fund.

(b) Any person who violates this section shall be subject to a civil fine of not more than \$1,000. (Mar. 9, 1988, D.C. Law 7-85, § 2, 34 DCR 8124.)

Legislative history of Law 7-85. — Law 7-85, the “Utility Bill Payment Act of 1987,” was introduced in Council and assigned Bill No. 7-78, which was referred to the Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and second readings on November 10, 1987, and November 24, 1987, respectively. Signed by the Mayor on December 10, 1987, it was assigned Act No. 7-120 and transmitted to both Houses of Congress for its review.

References in text. — The “Federal Savings and Loan Insurance Corporation”, referred to in (a), has been abolished. For provisions relating to the abolition of the Federal Savings and Loan Insurance Corporation and the transfer of functions, personnel and property of that agency, see §§ 401 to 406 of Pub. L. 101-73, set out as a note under 12 U.S.C. § 1437.

CHAPTER 2. JOINT ACCOUNTS; ADVERSE CLAIMANTS; TRUST ACCOUNTS.

Sec.	Sec.
26-201. Deposits or shares of stock in names of 2 or more persons; payments or deliveries; liability of bank.	right of access or delivery; liability of bank.
26-202. Property in boxes, vaults or held for safekeeping for 2 or more persons;	26-203. Notice of adverse claim to deposit.
	26-204. Payment of trust accounts on death of trustee.

§ 26-201. Deposits or shares of stock in names of 2 or more persons; payments or deliveries; liability of bank.

When a deposit shall have been made in, or shall after May 15, 1928, be made in, or any collection item shall have been placed or shall after May 15, 1928, be placed with any bank, trust company, savings bank, building association, or other banking institution, including national banks, transacting business in the District of Columbia, or when any shares of stock shall have been issued or shall after May 15, 1928, be issued by any building association, transacting business in the District of Columbia, in the names of 2 or more persons, including husband and wife, payable to either, or payable to either or the survivor or survivors, such deposit, or in any part thereof, or any interest or dividend thereon, and such collection item or its proceeds, or any interest or dividend thereon, or such shares of stock issued by a building association or any interest or dividend thereon, may be paid or delivered to either of said persons whether the other or others be living or not; and the receipt or acquittance of the person to whom such payment or delivery is made shall be a valid, sufficient, and complete release and discharge of the bank, trust company, savings bank, building association, or other banking institution, including national banks, for any payment or delivery so made. (May 15, 1928, 45 Stat. 533, ch. 568, § 1; 1973 Ed., § 26-201.)

Cross references. — As to the Uniform Fiduciary Act, see §§ 21-1701 to 21-1712.

Section references. — This section is referred to in § 26-809.1.

Establishment of depositor's intention insufficient. — A showing that the name of the depositor's brother was merely appended to the bank account, without more, is insufficient to

establish the intention of the depositor to establish a joint account with a right of survivorship. *Gibson v. Industrial Bank*, App. D.C., 36 A.2d 62 (1944).

Cited in *Imirie v. Imirie*, 246 F.2d 652 (D.C. Cir. 1957); *Williams v. Williams*, 346 F.2d 808 (D.C. Cir. 1965); *Isaac v. First Nat'l Bank*, App. D.C., 647 A.2d 1159 (1994).

§ 26-202. Property in boxes, vaults or held for safekeeping for 2 or more persons; right of access or delivery; liability of bank.

When a safety deposit box or vault shall have been hired from any bank, trust company, savings bank, building association, or other banking institution, including national banks, or any other corporation, transacting business in the District of Columbia, in the names of 2 or more persons, including husband and wife, with the right of access being given to either, or with access to either or the survivor or survivors of said persons, or property is held for

safekeeping by any such bank, trust company, savings bank, building association, or other corporation or banking institution, including national banks, for 2 or more persons, including husband and wife, with the right of delivery being given to either, or with the right of delivery to either or the survivor or survivors of said persons, any one or more of such persons, whether the other or others be living or not, shall have the right of access to such safety deposit box or vault and to remove the contents thereof, or any part of such contents, or to have delivered to him or them, the property so held for safekeeping, or any part thereof, and in case of such removal or delivery the said bank, trust company, savings bank, building association, or other corporation or banking institution, including national banks, shall be exempt from any liability for permitting such access or removal or for the delivery to such person or persons. (May 15, 1928, 45 Stat. 534, ch. 568, § 2; 1973 Ed., § 26-202.)

Section references. — This section is referred to in § 26-809.1.

§ 26-203. Notice of adverse claim to deposit.

Notice to any bank or trust company doing business in the District of Columbia of an adverse claim to a deposit standing on its books to the credit of any person shall not be effectual to cause said bank or trust company to recognize said adverse claimant unless said adverse claimant shall also either: (1) procure a restraining order, injunction, or other appropriate process against said bank or trust company from a court of competent jurisdiction in a cause therein instituted by him wherein the person to whose credit the deposit stands is made a party and served with summons; or (2) execute to such bank or trust company, in form and with sureties acceptable to it, a bond indemnifying said bank or trust company from any and all liability, loss, damage, costs, and expenses, for and on account of the payment of such adverse claim or the dishonor of the check or other order of the person to whose credit the deposit stands on the books of said bank or trust company; provided, that this section shall not apply to any instance where the person to whose credit the deposit stands is a fiduciary for such adverse claimant, and the facts constituting such relationship, together with the facts showing reasonable cause of belief on the part of the said claimant that the said fiduciary is about to misappropriate said deposit, are made to appear by the affidavit of such claimant. (Apr. 5, 1939, 53 Stat. 566, ch. 37, § 2; 1973 Ed., § 26-203.)

Section references. — This section is referred to in § 26-809.1.

Section is to be broadly construed. Goldstein v. Riggs Nat'l Bank, 459 F.2d 1161 (D.C. Cir. 1972).

Section by its terms applies only to banks and trust companies, not to savings and loan associations. Stevenson v. First Nat'l Bank, App. D.C., 395 A.2d 21 (1978).

Financial institutions may freeze depos-

its subject to adverse claims. — When a savings and loan association, credit union or similar banking institution receives notice of an adverse claim to a deposit, said institution may freeze that deposit for a brief, reasonable period of time so as to permit the filing of litigation, either by interpleader or other appropriate civil litigation, to resolve the adverse claims. Stevenson v. First Nat'l Bank, App. D.C., 395 A.2d 21 (1978).

§ 26-204. Payment of trust accounts on death of trustee.

Whenever a deposit, savings account, or share account, which is in form in trust for another, shall be made or held by any person in any bank, trust company, savings and loan association, building association, building and loan association, or federal savings and loan association, doing business in the District of Columbia, and no other or further notice of the existence and terms of a legal and valid trust shall have been given in writing to such bank, trust company, or other association, such deposit, savings account, or share account, or any part thereof, together with the dividends, or interest thereon, may, in the event of the death of the trustee, be paid to the person for whom such deposit, savings account, or share account was made or held, or to his legal representative. (Apr. 5, 1939, 53 Stat. 567, ch. 37, § 4; July 19, 1954, 68 Stat. 494, ch. 545, § 1; 1973 Ed., § 26-204.)

Section references. — This section is referred to in § 26-809.1.

CHAPTER 3. COMMON TRUST FUNDS.

Sec.
26-301. Establishment.
26-302. Taxability.

Sec.
26-303. Court accountings.
26-304. Uniformity of laws.

§ 26-301. Establishment.

Any bank or trust company qualified to act as fiduciary in the District of Columbia may, subject to such rules and regulations as may be promulgated from time to time by the Board of Governors of the Federal Reserve System under the provisions of § 92a of Title 12, United States Code, as amended, pertaining to the collective investment of trust funds by national banks, establish common trust funds for the purpose of furnishing investments to itself as fiduciary, or to itself and others as cofiduciaries; and may, as such fiduciary or cofiduciary, invest funds which it lawfully holds for investment in interests in such common trust funds, if such investment is not prohibited by the instrument, judgment, decree, or order creating such fiduciary relationship, and if, in the case of cofiduciaries, the bank or trust company procures the written consent of its cofiduciaries to such investment. (Oct. 27, 1949, 63 Stat. 938, ch. 767, § 1; 1973 Ed., § 26-701.)

§ 26-302. Taxability.

(a) A common trust fund, as herein defined, shall not be subject to any tax imposed by Chapter 18 of Title 47, and for the purpose of said subchapter shall not be deemed to be a corporation.

(b) The net income of a common trust fund shall be computed in the same manner and on the same basis as in the case of an individual. Each participant in a common trust fund shall include, in computing its net income, its proportionate share of the net income of such fund, whether or not distributed to it, and the amount so included in the net income of a participant shall be taxable to such participant, or its beneficiaries, in the manner and to the extent provided in subchapter IX of Chapter 18 of Title 47, as if any amount not distributed to the participant during its taxable year actually had been so distributed.

(c) No gain or loss shall be realized by a common trust fund upon the admission or withdrawal of a participant, or upon the admission or withdrawal of any interest of a participant. The withdrawal of any participating interest by a participant shall be treated as a sale or exchange of such interest by such participant.

(d) Every bank or trust company maintaining a common trust fund shall make a return under oath for the taxable year of such fund.

(e) If the taxable year of a common trust fund is different from that of a participant therein, the proportionate share of the net income of such fund to be included in computing the net income of such participant for its taxable year shall be based upon the net income of such fund for its taxable year ending within the taxable year of such participant. (Oct. 27, 1949, 63 Stat. 938, ch. 767, § 2; 1973 Ed., § 26-702.)

§ 26-303. Court accountings.

Unless ordered by a court of competent jurisdiction the bank or trust company operating such common trust funds is not required to render a court accounting with regard to such common trust funds; but it may, by application to the Superior Court of the District of Columbia, secure approval of such accounting on such conditions as the Court may establish. (Oct. 27, 1949, 63 Stat. 938, ch. 767, § 3; July 29, 1970, 84 Stat. 572, Pub. L. 91-358, title I, § 155(c) (34); 1973 Ed., § 26-703.)

§ 26-304. Uniformity of laws.

This chapter shall be so interpreted and construed as to effectuate its general purpose to make uniform the law of the District of Columbia with the law of those states which enact the Uniform Common Trust Fund Act. (Oct. 27, 1949, 63 Stat. 939, ch. 767, § 4; 1973 Ed., § 26-704.)

CHAPTER 4. TRUST, LOAN, MORTGAGE, SAFE DEPOSIT AND TITLE CORPORATIONS.

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| <p>Sec.</p> <p>26-401. Manner of formation; purposes.</p> <p>26-402. Existing title insurance companies may become perpetual.</p> <p>26-403. Trust companies to have perpetual succession.</p> <p>26-404. Organization certificate; execution; contents.</p> <p>26-405. Charter of incorporation — Power of Council to grant or refuse.</p> <p>26-406. Same — Notice of application.</p> <p>26-407. Same — Recording; certificate to be obtained from Superintendent of Banking and Financial Institutions.</p> <p>26-408. Reports to Superintendent of Banking and Financial Institutions.</p> <p>26-409. Powers of companies; liability as trustee.</p> <p>26-410. Appointment as fiduciary.</p> <p>26-411. Oath as fiduciary.</p> <p>26-411.1. Automatic substitution of fiduciaries.</p> <p>26-412. Stock, property, and liability to be security when fiduciary.</p> <p>26-413. Existing companies; certificate of intention to comply with provisions.</p> <p>26-414. Real property held and conveyed by companies.</p> <p>26-415. Duration of charter.</p> <p>26-416. Capital stock — Amount; payment; deposit with Superintendent of Banking and Financial Institutions.</p> <p>26-417. Same — Calls; sale on failure to pay money subscribed.</p> | <p>Sec.</p> <p>26-418. Annual reports — Publication; contents; verification.</p> <p>26-419. Same — Liability of directors or trustees.</p> <p>26-420. Wilful false swearing; misappropriation.</p> <p>26-421. Stock deemed personal estate; transfer; contents of certificates.</p> <p>26-422. Liability of stockholders.</p> <p>26-423. Payment of stock to be in money only; exception.</p> <p>26-424. Election of, and management of company by, directors or trustees.</p> <p>26-425. Officers; security authorized.</p> <p>26-426. Power to make bylaws; purposes thereof.</p> <p>26-427. Liability of directors or trustees on declaration of dividends — Conditions.</p> <p>26-428. Same — Exemption.</p> <p>26-429. Directors or trustees personally liable when liabilities exceed assets.</p> <p>26-430. Fiduciary not liable as stockholder; liability of estate and funds.</p> <p>26-431. Increase or decrease of capital stock.</p> <p>26-432. Copy of certificate as evidence.</p> <p>26-433. Security required for performance of fiduciary duties; liability thereon.</p> <p>26-434. Powers of probate court.</p> <p>26-435. Compliance required of foreign corporations or companies.</p> <p>26-436. Right of Congress to amend or repeal chapter; remedies preserved.</p> |
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§ 26-401. Manner of formation; purposes.

Corporations may be formed within the District of Columbia for the purposes hereinafter mentioned in the following manner: any number of natural persons, citizens of the United States, not less than 25, may associate themselves together to form a company for the purpose of carrying on, in the District of Columbia, any 1 of the 3 classes of business herein specified, to wit: (1) a safe deposit, trust, loan, and mortgage business; (2) a title insurance, loan, and mortgage business; or (3) a security, guarantee, indemnity, loan, and mortgage business; provided, that the capital stock of any of said companies shall not be less than \$1,000,000 except as otherwise provided in § 35-1516, and that any of said companies may also do a storage business when their capital stock amounts to the sum of not less than \$1,200,000. (Mar. 3, 1901, 31 Stat. 1303, ch. 854, § 715; Apr. 16, 1966, 80 Stat. 121, Pub. L. 89-399, § 1(b); 1973 Ed., § 26-301.)

Cross references. — As to provisions applicable to trust and fiduciary companies, see §§ 26-101 to 26-110.

As to special powers of companies organized under this chapter, see § 26-409.

As to existing corporation availing itself of this chapter, see § 26-413.

As to exemption from operation of money lenders law, see § 26-710.

As to procedures for amending charter, see § 29-238.

As to exception of title insurance from operation of Fire and Casualty Act, see § 35-1502.

As to excise and license taxes, see §§ 47-2501 to 47-2508.

Section references. — This section is referred to in §§ 26-404, 26-409, 26-410, 26-413, 26-802.1, and 26-809.1.

Transfer of functions. — Pursuant to Reorganization Plan No. 3 of 1992, effective January 20, 1993, unless another date was designated by the Mayor under Sec. V of the Plan, the D.C. Office of Banking and Financial Institutions (“OBFI”) is hereby transferred from the Deputy Mayor for Economic Development (“DMED”) control center to a separate OBFI control center/responsibility center. OBFI will continue to be administered by the Superintendent and will remain a part of the economic development cluster reporting to the Mayor.

§ 26-402. Existing title insurance companies may become perpetual.

Any company formed prior to January 1, 1902, agreeably to law, for the purpose of insuring titles to real estate may become perpetual by filing, in the Office of the Recorder of Deeds, a certificate to that effect, in like manner as is provided by law for the filing of the original certificate of incorporation. (Mar. 3, 1901, 31 Stat. 1289, ch. 854, § 641; 1973 Ed., § 26-302.)

Section references. — This section is referred to in §§ 26-809.1, 29-101, 29-209, 29-211, 29-215, 29-223, 29-229, 29-233, 29-234, 29-236, and 29-238 to 29-240.

§ 26-403. Trust companies to have perpetual succession.

Any company transacting the business of a trust company and heretofore or hereafter organized or operating under the provisions of this chapter, but before April 11, 1986, shall have perpetual succession from the date of its organization, or until such time as it be dissolved, or until its franchise shall become forfeited by reason of violation of law, or until terminated by either a general or special act of Congress, or until its affairs be placed in the hands of a receiver and finally wound up by him. (Mar. 3, 1901, 31 Stat. 1289, ch. 854, § 641; June 24, 1936, 49 Stat. 1898, ch. 743; 1973 Ed., § 26-303; Nov. 23, 1986, D.C. Law 6-63, § 106(a)(1), as added Apr. 11, 1986, D.C. Law 6-107, § 2(k), 33 DCR 1168.)

Cross references. — As to voluntary liquidation and discontinuance, see § 26-103.

Section references. — This section is referred to in § 26-809.1.

Legislative history of Law 6-107. — Law 6-107, the “District of Columbia Regional Interstate Banking Act of 1985 Amendments Act of 1985,” was introduced in Council and assigned

Bill No. 6-276, which was referred to the Committee on Housing and Economic Development. The Bill was adopted on first and second readings on January 14, 1986 and January 28, 1986, respectively. Signed by the Mayor on February 14, 1986, it was assigned Act No. 6-136 and transmitted to both Houses of Congress for its review.

§ 26-404. Organization certificate; execution; contents.

The persons referred to in § 26-401 shall, under their hands and seals, execute before some officer in said District competent to take the acknowledgment of deeds, an organization certificate, which shall specifically state:

- (1) The name of the corporation;
- (2) The purposes for which it is formed;
- (3) The term for which it is to exist, which shall not exceed the term of 50 years, and be subject to alteration, amendment, or repeal by Congress at any time;
- (4) The number of its directors and the names and residences of the officers who for the first year are to manage the affairs of the company; and
- (5) The amount of its capital stock and its subdivision into shares. (Mar. 3, 1901, 31 Stat. 1303, ch. 854, § 716; 1973 Ed., § 26-304.)

Cross references. — As to prohibition against use of words “trust company” unless operated under supervision of Comptroller, see § 26-107.

Section references. — This section is referred to in § 26-809.1.

§ 26-405. Charter of incorporation — Power of Council to grant or refuse.

This certificate shall be presented to the Council of the District of Columbia, which shall have power and discretion to grant or refuse to said persons a charter of incorporation upon the terms set forth in the said certificate and the provisions of this chapter. (Mar. 3, 1901, 31 Stat. 1303, ch. 854, § 717; 1973 Ed., § 26-305.)

Cross references. — As to power of Comptroller over trust companies, see §§ 26-101 to 26-103.

Section references. — This section is referred to in § 26-809.1.

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 402(223) of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners

under this section to the District of Columbia Council, subject to the right of the Commissioner as provided in § 406 of the Plan. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

§ 26-406. Same — Notice of application.

Previous to the presentation of the said certificate to the said Council of the District of Columbia, notice of the intention to apply for such charter shall be inserted in 2 newspapers of general circulation, printed in the District of Columbia, at least 4 times a week for 3 weeks, setting forth briefly the name of the proposed company, its character and object, the names of the proposed incorporators, and the intention to make application for a charter on a specified day; and the proof of such publication shall be presented with said certificate when presentation thereof is made to said Council. (Mar. 3, 1901, 31 Stat. 1303, ch. 854, § 718; 1973 Ed., § 26-306.)

Section references. — This section is referred to in § 26-809.1.

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 402(223) of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to the District of Columbia Council, subject to the right of the Commis-

sioner as provided in § 406 of the Plan. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

§ 26-407. Same — Recording; certificate to be obtained from Superintendent of Banking and Financial Institutions.

If the charter be granted as aforesaid, it, together with the certificate of the Council of the District of Columbia granting the same indorsed thereon, shall be filed for record in the Office of the Recorder of Deeds for the District of Columbia, and shall be recorded by him. On the filing of the said certificate with the said Recorder of Deeds as herein provided, approved as aforesaid by the said Council, the persons named therein and their successors shall thereupon and thereby be and become a body corporate and politic, and as such shall be vested with all the powers and charged with all the liabilities conferred upon and imposed by this chapter upon companies organized under the provisions hereof; provided, however, that no corporation created and organized under the provisions hereof, or availing itself of the provisions hereof as contained in § 26-413, shall be authorized to transact the business of a trust company, or any business of a fiduciary character, until it shall have filed with the Superintendent of Banking and Financial Institutions a copy of its certificate of organization and charter, and shall have obtained from him and filed the same for record with the said Recorder of Deeds, a certificate that the said capital stock of said company has been paid in and the deposit of securities made with said Superintendent of Banking and Financial Institutions in the manner and to the extent required by this title. (Mar. 3, 1901, 31 Stat. 1304, ch. 854, § 719; 1973 Ed., § 26-307; Nov. 23, 1985, D.C. Law 6-63, § 106(a)(6), as added Apr. 11, 1986, D.C. Law 6-107, § 2(k), 33 DCR 1168.)

Cross references. — As to power of Comptroller over trust companies, see §§ 26-101 to 26-103.

Section references. — This section is referred to in § 26-809.1.

Legislative history of Law 6-107. — See note to § 26-403.

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmen-

tal Organization in Volume 1). Section 402(223) of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to the District of Columbia Council, subject to the right of the Commissioner as provided in § 406 of the Plan. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced

by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

§ 26-408. Reports to Superintendent of Banking and Financial Institutions.

All companies organized under this chapter, or which shall, under the provisions of this chapter, become entitled to transact the business of a trust company, shall report to the Superintendent of Banking and Financial Institutions pursuant to Chapter 8 of this title. (Mar. 3, 1901, 31 Stat. 1304, ch. 854, § 720; 1973 Ed., § 26-308; Nov. 23, 1985, D.C. Law 6-63, § 106(a)(7), as added Apr. 11, 1986, D.C. Law 6-107, § 2(k), 33 DCR 1168.)

Cross references. — As to powers of Comptroller over trust companies, see §§ 26-101 to 26-103.

Section references. — This section is referred to in § 26-809.1.

Legislative history of Law 6-107. — See note to § 26-403.

Purpose of section is to make trust companies and state incorporated banks, doing business in the District, subject to the authority of the Comptroller both in operation and insolvency. *Dunn v. O'Connor*, 89 F.2d 820 (D.C. Cir. 1937).

§ 26-409. Powers of companies; liability as trustee.

All companies organized under this chapter are hereby declared to be corporations possessed of the powers and functions of corporations generally, and shall have power:

- (1) To make contracts;
- (2) To sue and be sued, plead and be impleaded, in any court as fully as natural persons;
- (3) To make and use a common seal and alter the same at pleasure;
- (4) To loan money; and
- (5) When organized under clause (1) of § 26-401, to accept and execute trusts of any and every description which may be committed or transferred to them, and to accept the office and perform the duties of receiver, assignee, personal representative, special administrator, guardian of the estate of minors with the consent of the guardian of the person of such minor, and committee of the estates of lunatics and idiots whenever any trusteeship or any such office or appointment is committed or transferred to them, with their consent, by any person, body politic or corporate, or by any court in the District of Columbia; and all such companies organized under clause (1) of § 26-401 are further authorized to accept deposits of money for the purposes designated herein, upon such terms as may be agreed upon from time to time with depositors, and to act as agent for the purpose of issuing or countersigning the bonds or obligations of any corporation, association, municipality, or state, or other public authority, and to receive and manage any sinking fund on any such terms as may be agreed upon, and shall have power to issue its debenture bonds upon deeds of trust or mortgages of real estate to a sum not exceeding the face value of said deeds of trust or mortgages, and which shall not exceed 50% of the fair cash value of the real estate covered by said deeds or mortgages,

to be ascertained by the Superintendent of Banking and Financial Institutions; but no debenture bonds shall be issued until the securities on which the same are based have been placed in the actual possession of the trustee named in the debenture bonds, who shall hold said securities until all of said bonds are paid; and when organized under clause (2) of § 26-401 said company is authorized to insure titles to real estate and to transact generally the business mentioned in said clause; and when organized under clause (3) of § 26-401 said company is hereby authorized, in addition to the loan and mortgage business therein mentioned, to secure, guarantee, and insure individuals, bodies politic, associations, and corporations against loss by or through trustees, agents, servants, or employees, and to guarantee the faithful performance of contracts and obligations of whatever kind entered into by or on the part of any person or persons, association, corporation, or corporations, and against loss of every kind; provided, that any corporations formed under the provisions of this chapter when acting as trustee shall be liable to account for the amounts actually earned by the moneys held by it in trust in addition to the principal so held; but such corporation may be allowed a reasonable compensation for services performed in the care of the trust estate. (Mar. 3, 1901, 31 Stat. 1304, ch. 854, § 721; 1973 Ed., § 26-309; June 24, 1980, D.C. Law 3-72, § 207(a), 27 DCR 2155; Nov. 23, 1985, D.C. Law 6-63, § 106(a)(8), as added Apr. 11, 1986, D.C. Law 6-107, § 2(k), 33 DCR 1168.)

Cross references. — As to power of Comptroller over trust companies, see §§ 26-101 to 26-103.

As to false statements against trust companies, see § 26-108.

As to trust or joint deposits, accounts, or safety deposit boxes, see §§ 26-201 to 26-204.

As to number, residency requirements, and term of office of trustees or directors, see § 26-424.

As to power to make bylaws, see § 26-426.

As to payment of checks or other instruments more than six months after its date, see §§ 28:3-503 and 28:4-404.

As to bank's liability as forwarding agent, see § 28:4-202.

As to damages for a mistake or error in paying instruments, see § 28:4-402.

As to payment of forged or altered instrument, see § 28:4-406.

As to authority of insurance companies to write title insurance, see § 35-1403.

As to formal requisites for conveyances of real estate, see § 45-502.

Section references. — This section is referred to in § 26-809.1.

Legislative history of Law 3-72. — Law 3-72, the "District of Columbia Probate Reform Act of 1980," was introduced in Council and assigned Bill No. 3-91, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on April 1, 1980 and April 22, 1980, respectively. Signed by the Mayor on May 7, 1980, it was assigned Act No. 3-181 and transmitted to both Houses of Congress for its review.

Legislative history of Law 6-107. — See note to § 26-403.

§ 26-410. Appointment as fiduciary.

In all cases in which application shall be made to any court in the District of Columbia, or wherever it becomes necessary or proper for said court to appoint a trustee, receiver, personal representative, special administrator, guardian of the estate of a minor, or committee of the estate of a lunatic, it shall and may be lawful for said court (but without prejudice to any preference in the order of any such appointments required by law) to appoint any such company organized under clause (1) of § 26-401; with its assent, such trustee, receiver, personal representative, special administrator, committee, or guardian, with

the consent of the guardian of the person of such minor; provided, however, that no court or judge who is an owner of or in any manner financially interested in the stock or business of such corporation shall commit by order or decree to any such corporation any trust or fiduciary duty. (Mar. 3, 1901, 31 Stat. 1305, ch. 854, § 722; 1973 Ed., § 26-310; June 24, 1980, D.C. Law 3-72, § 207(b), 27 DCR 2155.)

Section references. — This section is referred to in § 26-809.1.

Legislative history of Law 3-72. — See note to § 26-409.

§ 26-411. Oath as fiduciary.

Whenever any corporation operating under this Code shall be appointed such trustee, personal representative, special administrator, receiver, assignee, guardian, or committee, as aforesaid, the president, vice-president, secretary, or treasurer of said company shall take the oath or affirmation required by law to be made by any trustee, personal representative, special administrator, receiver, assignee, guardian, or committee. (Mar. 3, 1901, 31 Stat. 1305, ch. 854, § 723; 1973 Ed., § 26-311; June 24, 1980, D.C. Law 3-72, § 207(c), 27 DCR 2155.)

Section references. — This section is referred to in § 26-809.1.

Legislative history of Law 3-72. — See note to § 26-409.

§ 26-411.1. Automatic substitution of fiduciaries.

(a) For the purpose of this section, the term:

(1) “Affiliate” means a company that is affiliated with a bank or bank holding company because the bank or bank holding company has the power to vote 5% or more of the outstanding voting securities of the company.

(2) “Bank” means a bank as defined in § 2(c)(1) of the Bank Holding Companies Act (12 U.S.C. § 1841(c)(1)).

(3) “Bank holding company” means a bank holding company as defined in § 2(a) of the Bank Holding Companies Act (12 U.S.C. § 1841(a)).

(4) “Beneficiary” means a person who is currently receiving or is entitled to receive a current distribution of principal or income from a trust, estate, or fund from a fiduciary that is subject to this section. The term “beneficiary” shall include:

(A) A minor beneficiary’s natural or legal guardian; and

(B) Any person acting on behalf of an incompetent beneficiary under a court ordered guardianship, conservatorship, or committee.

(5) “District” means the District of Columbia.

(6) “Fiduciary” means a trustee, personal representative, executor, executrix, receiver, special administrator, guardian, conservator, committee, custodian, or any other term denoting a fiduciary relationship.

(7) “Trust company” means a corporation organized under the laws of the District to carry on a trust business or a national association organized under the laws of the United States that is authorized to transact trust business in the District and meets the criteria of § 2(2)(d) of the Bank Holding Companies Act (12 U.S.C. § 1841 (c)(2)(D)).

(b) Notwithstanding any other provision of law, the successor bank, trust company, or subsidiary shall be automatically substituted as the successor fiduciary if:

(1) A bank that is qualified to administer trusts merges into, is consolidated with, or purchases the assets of a trust company or a bank that is qualified to administer trusts;

(2) A trust company merges into, is consolidated with, or purchases the assets of another trust company or a bank that is qualified to administer trusts;

(3) A bank or bank holding company causes a subsidiary that is qualified to administer trusts to succeed to part or all of the trust business of the bank or bank holding company; or

(4) A bank or bank holding company causes a subsidiary to succeed to part or all of the trust business of another subsidiary of the bank or bank holding company.

(c) The substitution of one fiduciary for another fiduciary pursuant to this section shall be effective 60 days after closing pursuant to the acquisition or merger agreement, without any order or approval of any court or public officer. The successor fiduciary shall have all the rights and duties of the predecessor fiduciary. Unless otherwise provided in the document or instrument, the successor fiduciary shall be automatically named as fiduciary in all writings, wills, trusts, court orders, or similar documents or instruments that name the predecessor fiduciary as fiduciary, whether signed before or after the successor fiduciary is created or succeeds to the trust business of the predecessor fiduciary.

(d) For the purposes of qualification as a fiduciary or a successor fiduciary under any requirement contained in any document creating or relating to a fiduciary capacity, the successor bank, trust company, bank holding company, or subsidiary trust company is considered to have capital and surplus equal to its capital and surplus plus the capital and surplus of its owning bank, bank holding company, and their affiliates.

(e) Not less than 30 days before the succession becomes effective under this section, the successor fiduciary shall publish notice of the succession in a newspaper of general circulation in the District and shall mail the notice to each co-fiduciary of the successor fiduciary, to each surviving settlor of a trust, to each person who alone or in conjunction with others has the power to remove the fiduciary, to each beneficiary of a trust, estate, or fund, and to the Superintendent of Banking and Financial Institutions of the District of Columbia. In the case of a trust described in chapter 736 of the Internal Revenue Code of 1986 (26 U.S.C. § 401(a)), notice shall be mailed to the employer, employee organization, or both, responsible for the maintenance of the trust. Notice shall be sent by certified mail to the last known address of the addressee and shall contain the name of the predecessor fiduciary, the name of the successor fiduciary, and the effective date of the assumption of fiduciary responsibilities by the successor fiduciary.

(f) Within 180 days after succession under this section, a co-fiduciary, settlor of a trust, beneficiary, guardian, conservator, committee, or any other person

authorized to remove a fiduciary, may apply to the Superior Court of the District of Columbia (“Court”) for the appointment of a new fiduciary to replace the successor fiduciary. The Court may appoint a new fiduciary to replace the successor fiduciary if it finds, after notice to all parties in interest and a hearing, that the successor fiduciary will adversely affect the administration of the fiduciary account and that the appointment of a new fiduciary will be in the best interest of the petitioner and all interested parties. This provision shall be in addition to any other provision of law governing the removal of a fiduciary and shall be subject to the terms upon which the original fiduciary was designated as fiduciary. (Mar. 3, 1901, ch. 854, § 723a, as added June 16, 1989, D.C. Law 8-10, § 2, 36 DCR 3364.)

Legislative history of Law 8-10. — Law 8-10, the “Automatic Substitution of Fiduciaries Amendment Act of 1989,” was introduced in Council and assigned Bill No. 8-141, which was referred to the Committee on the Judiciary. The

Bill was adopted on first and second readings on April 4, 1989 and April 18, 1989, respectively. Signed by the Mayor on April 27, 1989, it was assigned Act No. 8-26 and transmitted to both Houses of Congress for its review.

§ 26-412. Stock, property, and liability to be security when fiduciary.

When any court shall appoint the said company a trustee, receiver, personal representative, special administrator, or such guardian or committee, or shall order the deposit of money or other valuable with said company, or where any individual or corporation shall appoint any of said companies a trustee, executor, assignee, or such guardian, the capital stock of said company subscribed for or taken, and all property owned by said company, together with the liability of the stockholders and officers as herein provided, shall be taken and considered as the security required by law for the faithful performance of its duties, and shall be absolutely liable in case of any default whatever. (Mar. 3, 1901, 31 Stat. 1305, ch. 854, § 724; 1973 Ed., § 26-312; June 24, 1980, D.C. Law 3-72, § 207(d), 27 DCR 2155.)

Section references. — This section is referred to in § 26-809.1.

Legislative history of Law 3-72. — See note to § 26-409.

§ 26-413. Existing companies; certificate of intention to comply with provisions.

Any safe deposit company, trust company, surety or guaranty company, or title insurance company incorporated on or before January 1, 1902, and operating under the laws of the United States in the District of Columbia or of any of the states, and doing business in said District on or before January 1, 1902, may avail itself of the provisions of this chapter on filing in the Office of the Recorder of Deeds of the District of Columbia, or with the Superintendent of Banking and Financial Institutions, a certificate of its intention to do so, which certificate shall specify which one of the 3 classes of business set out in § 26-401 it will carry on, and shall be verified by the oath of its president to the effect that it has in every respect complied with the requirements of existing law, especially with the provisions of this chapter, that its capital stock is paid

in as provided in § 26-423 and is not impaired; and thereafter such company may exercise all powers and perform all duties authorized by any 1 of the clauses of § 26-401 in addition to the powers lawfully exercised by such company on January 1, 1902. (Mar. 3, 1901, 31 Stat. 1306, ch. 854, § 725; 1973 Ed., § 26-313; Nov. 23, 1985, D.C. Law 6-63, § 106(a)(9), as added Apr. 11, 1986, D.C. Law 6-107, § 2(k), 33 DCR 1168.)

Section references. — This section is referred to in §§ 26-407, 26-422, and 26-809.1.

Legislative history of Law 6-107. — See note to § 26-403.

Scope of Comptroller's authority. — The Comptroller has the same control and management of an insolvent state bank operating in

the District as he does in the national banks, including all provisions for the collection of debts and the distribution of assets, as well the enforcement of the liability of stockholders. *Hamilton v. Offutt*, 78 F.2d 735 (D.C. Cir.), cert. denied, 296 U.S. 592, 56 S. Ct. 121, 80 L. Ed. 419 (1935).

§ 26-414. Real property held and conveyed by companies.

Any company operating under this chapter may lease, purchase, hold, and convey real property in which the offices of the company are located not to exceed in value the capital and surplus of the company, and such in addition as it may acquire in satisfaction of debts due the corporation under sales, decrees, judgments, and mortgages. But no such association shall hold the possession of any real estate under foreclosure of mortgage, or the title and possession of any real estate purchased to secure any debts due to it, for a longer period than 5 years. (Mar. 3, 1901, 31 Stat. 1306, ch. 854, § 726; Apr. 19, 1920, 41 Stat. 566, ch. 153; 1973 Ed., § 26-314.)

Section references. — This section is referred to in § 26-809.1.

§ 26-415. Duration of charter.

The charters for incorporations named in this chapter and granted before April 11, 1986, may be made perpetual, or may be limited in time by their provisions, subject to the approval of Congress. (Mar. 3, 1901, 31 Stat. 1306, ch. 854, § 727; 1973 Ed., § 26-315; Nov. 23, 1985, D.C. Law 6-63, § 106(a)(10), as added Apr. 11, 1986, D.C. Law 6-107, § 2(k), 33 DCR 1168.)

Cross references. — As to perpetual existence of title insurance companies, see § 26-402.

As to perpetual existence of trust companies, see § 26-403.

Section references. — This section is referred to in § 26-809.1.

Legislative history of Law 6-107. — See note to § 26-403.

§ 26-416. Capital stock — Amount; payment; deposit with Superintendent of Banking and Financial Institutions.

The capital stock of every such company shall be at least \$1,000,000, and at least 50% thereof must have been paid in, in cash or by the transfer of assets as hereinafter provided in § 26-423, before any such company shall be entitled to transact business as a corporation, except with its own members, and before any company organized hereunder shall be entitled to transact the business of

a trust company, or to become and act as a personal representative, guardian of the estate of a minor, or undertake any other kindred fiduciary duty, it shall deposit, either in money or in bonds, mortgages, deeds of trust, or other securities equal in actual value to one-fourth of the capital stock paid in, with the Superintendent of Banking and Financial Institutions, to be kept by him upon the trust and for the purposes hereinafter provided; and the said Superintendent of Banking and Financial Institutions may from time to time require an additional deposit from any such company, to be held upon and for the same trust and purposes, not exceeding, however, in value one-half the paid-in capital stock; and the said Superintendent of Banking and Financial Institutions shall not issue to any corporation the certificate heretofore provided for until said deposit with him of securities required by this section. Within 1 year after the organization of any corporation under the provisions of this chapter, or after any corporation existing prior to January 1, 1902, shall have availed itself of the powers and rights given by this chapter in the manner herein provided for, its entire capital stock shall have been paid in. (Mar. 3, 1901, 31 Stat. 1306, ch. 854, § 728; 1973 Ed., § 26-316; June 24, 1980, D.C. Law 3-72, § 207(e), 27 DCR 2155; Nov. 23, 1985, D.C. Law 6-63, § 106(a)(11), as added Apr. 11, 1986, D.C. Law 6-107, § 2(k), 33 DCR 1168.)

Cross references. — As to increase or decrease of capital stock, see § 26-431.

Section references. — This section is referred to in §§ 26-417 and 26-809.1.

Legislative history of Law 3-72. — See note to § 26-409.

Legislative history of Law 6-107. — See note to § 26-403.

§ 26-417. Same — Calls; sale on failure to pay money subscribed.

It shall be lawful for such company to call for and demand from the stockholders, respectively, all sums of money by them subscribed, at such time and in such proportions as its board of directors shall deem proper, within the time specified in § 26-416, and it may enforce payment by all remedies provided by law; and if any stockholder shall refuse or neglect to pay any instalment, as required by a resolution of the board of directors, after 30 days notice of the same, the said board of directors may sell at public auction to the highest bidder so many shares of said stock as shall pay said installment, under such general regulations as may be adopted in the bylaws of said company, and the highest bidder shall be taken to be the person who offers to purchase the least number of shares for the assessment due. (Mar. 3, 1901, 31 Stat. 1306, ch. 854, § 729; June 20, 1938, 52 Stat. 780, ch. 527; 1973 Ed., § 26-317; Sept. 10, 1985, D.C. Law 6-34, § 2, 32 DCR 3776; Mar. 12, 1986, D.C. Law 6-91, § 2, 33 DCR 310.)

Section references. — This section is referred to in § 26-809.1.

Legislative history of Law 6-34. — Law 6-34, the “District of Columbia Trust, Loan, Mortgage, Safe Deposit and Title Corporations Act Amendment Temporary Act of 1985,” was introduced in Council and assigned Bill No.

6-241, which was retained by Council. The Bill was adopted on first and second readings on May 28, 1985, and June 11, 1985, respectively. Signed by the Mayor on June 14, 1985, it was assigned Act No. 6-49 and transmitted to both Houses of Congress for its review.

Legislative history of Law 6-91. — Law

6-91, the "District of Columbia Trust, Loan, Mortgage, Safe Deposit and Title Corporations Act of 1985," was introduced in Council and assigned Bill No. 6-242, which was referred to the Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and second readings on December 3, 1985, and December 17, 1985, respectively. Signed by the Mayor on December 30, 1985, it was assigned Act No. 6-119 and transmitted to both Houses of Congress for its review.

Late payment forfeited rights under

subscription agreement. — Where a stock subscription had been accepted by the organizers of a national bank prior to the bank's actual existence and after the bank came into being it notified the subscriber that the payment for his shares was due on or before a certain date, the subscriber, who mailed a check which was not received by the bank until day after specified date, forfeited his rights under the subscription agreement. *Brown v. United Community Nat'l Bank*, 282 F. Supp. 781 (D.D.C. 1968).

§ 26-418. Annual reports — Publication; contents; verification.

Every such company shall annually, within 20 days after the 1st of January of each year, make a report to the Superintendent of Banking and Financial Institutions, which shall be published in a newspaper in the District, which shall state the amount of capital and of the proportion actually paid, the amount of debts, and the gross earnings for the year ending December 31st then next previous, together with their expenses, which report shall be signed by the president and a majority of the directors or trustees, and shall be verified by the oath of the president, secretary, and at least 3 of the directors or trustees; provided, however, that trust companies which are required to file and to publish reports under the provisions of § 161 of Title 12, United States Code, as amended, shall not be required to make or publish the annual report required under this section. (Mar. 3, 1901, 31 Stat. 1307, ch. 854, § 730; July 1, 1902, 32 Stat. 619, ch. 1352, § 6(5); Nov. 30, 1945, 59 Stat. 588, ch. 499; 1973 Ed., § 26-318; Nov. 23, 1985, D.C. Law 6-63, § 106(a)(12), as added Apr. 11, 1986, D.C. Law 6-107, § 2(k), 33 DCR 1168.)

Cross references. — As to powers of Comptroller, see §§ 26-101 to 26-103.

Section references. — This section is referred to in §§ 26-419 and 26-809.1.

Legislative history of Law 6-107. — See note to § 26-403.

§ 26-419. Same — Liability of directors or trustees.

If any company fails to comply with the provisions of § 26-418, all the directors or trustees of such company shall be jointly and severally liable for the debts of the company then existing and for all that shall be contracted before such report shall be made; provided, that in case of failure of the company in any year to comply with the provisions of § 26-418, and any of the directors shall, on or before January 15th of such year, file his written request for such compliance with the secretary of the company, the Superintendent of Banking and Financial Institutions, and the Recorder of Deeds of the District of Columbia, such director shall be exempt from the liability prescribed in this section. (Mar. 3, 1901, 31 Stat. 1307, ch. 854, § 731; 1973 Ed., § 26-319; Nov. 23, 1985, D.C. Law 6-63, § 106(a)(13), as added Apr. 11, 1986, D.C. Law 6-107, § 2(k), 33 DCR 1168.)

Section references. — This section is referred to in § 26-809.1.

Legislative history of Law 6-107. — See note to § 26-403.

§ 26-420. Wilful false swearing; misappropriation.

Any wilful false swearing in regard to any certificate or report or public notice required by the provisions of this chapter shall be perjury and shall be punished as such according to the laws of the District of Columbia. Any misappropriation of any of the money of any corporation or company formed under this chapter, or of any money, funds, or property intrusted to it, shall be held to be theft, and shall be punished as such under the laws of said District. (Mar. 3, 1901, 31 Stat. 1307, ch. 854, § 732; 1973 Ed., § 26-320; Dec. 1, 1982, D.C. Law 4-164, § 601(h), 29 DCR 3976.)

Cross references. — As to theft, see § 22-3811.

Section references. — This section is referred to in § 26-809.1.

Legislative history of Law 4-164. — Law 4-164, the “District of Columbia Theft and White Collar Crimes Act of 1982,” was introduced in Council and assigned Bill No. 4-133, which was referred to the Committee on the Judiciary. The Bill was adopted on first, amended first and second readings on June 22, 1982, July 6, 1982, and July 20, 1982, respectively. Signed by the Mayor on August 4, 1982, it was assigned Act No. 4-238 and transmitted to both Houses of Congress for its review.

Application of Law 4-164. — Section 701(a) of D.C. Law 4-164 provided that the provisions of the act shall apply only to offenses committed on or after the effective date of the act, that an offense is committed after the effective date of the act only if all elements of the offense occurred after the effective date, and that prosecutions for offenses committed prior to the effective date of the act shall be governed by the prior law, which is continued in effect for that purpose as if the act was not in force.

§ 26-421. Stock deemed personal estate; transfer; contents of certificates.

The stock of such company shall be deemed personal estate, and shall be transferable only on the books of such company in such manner as shall be prescribed by the bylaws of the company; but no shares shall be transferable until all previous calls thereon shall have been fully paid. All certificates of the stock of any company organized under this chapter shall show upon their face the par value of each share and the amount paid thereon. (Mar. 3, 1901, 31 Stat. 1307, ch. 854, § 733; July 1, 1902, 32 Stat. 619, ch. 1352, § 6(5); 1973 Ed., § 26-321.)

Section references. — This section is referred to in § 26-809.1.

§ 26-422. Liability of stockholders.

All stockholders of every company incorporated under this chapter, or availing itself of its provisions under § 26-413 shall be severally and individually liable to the creditors of such company to an amount equal to and in addition to the amount of stock held by them respectively for all debts and contracts made by such company. (Mar. 3, 1901, 31 Stat. 1307, ch. 854, § 734; 1973 Ed., § 26-322.)

Cross references. — As to suits against national banking associations applying to this section, see § 26-104.

As to liabilities of stockholders, see §§ 26-104 to 26-106.

As to termination of shareholders' liability, see § 26-105.

Section references. — This section is referred to in §§ 26-105 and 26-809.1.

Liability of stockholder is determined by the charter of incorporation and the laws of the

state in which the incorporation is had. *Hamilton v. Offutt*, 78 F.2d 735 (D.C. Cir.), cert. denied, 296 U.S. 592, 56 S. Ct. 121, 80 L. Ed. 419 (1935).

Double liability. — Taking possession of a District bank by the Comptroller does not impose double liability on the stockholders unless the state imposes double liability. *Hamilton v. Offutt*, 78 F.2d 735 (D.C. Cir.), cert. denied, 296 U.S. 592, 56 S. Ct. 121, 80 L. Ed. 419 (1935).

§ 26-423. Payment of stock to be in money only; exception.

Nothing but money shall be considered as payment of any part of the capital stock, except that in the case of any company doing business on January 1, 1902, in the District of Columbia in any of the classes herein provided for, or under any act of Congress, or by virtue of the laws of any of the states, and which company had on that date actually received full payment in money of at least 50% of the capital stock required by this chapter, and which company desires to obtain a charter under this chapter, all the assets or property may be received and considered as money at a value to be appraised and fixed by the Superintendent of Banking and Financial Institutions; provided, that all such assets and property are also transferred to and are thereafter owned by the company organized under this chapter. (Mar. 3, 1901, 31 Stat. 1308, ch. 854, § 735; 1973 Ed., § 26-323; Nov. 23, 1985, D.C. Law 6-63, § 106(a)(14), as added Apr. 11, 1986, D.C. Law 6-107, § 2(k), 33 DCR 1168.)

Section references. — This section is referred to in §§ 26-413, 26-416, and 26-809.1.

Legislative history of Law 6-107. — See note to § 26-403.

Double liability is an asset of creditors and not of the corporation. *Dunn v. O'Connor*, 89 F.2d 820 (D.C. Cir. 1937).

§ 26-424. Election of, and management of company by, directors or trustees.

The stock, property, and concerns of such company shall be managed by not less than 9 nor more than 30 directors or trustees, who shall, respectively, be stockholders, and citizens of the United States, and at least two-thirds of whom shall reside in the District of Columbia or within 100 miles of the location of the principal office of the company, and shall, except the first year, be annually elected by the stockholders at such time and place and after such published notice as shall be determined by the bylaws of the company, and said directors or trustees shall hold until their successors are elected and qualified. (Mar. 3, 1901, 31 Stat. 1308, ch. 854, § 736; Aug. 28, 1957, 71 Stat. 474, Pub. L. 85-199, § 1; 1973 Ed., § 26-324.)

Section references. — This section is referred to in § 26-809.1.

§ 26-425. Officers; security authorized.

There shall be a president of the company, who shall be a director, also a secretary and a treasurer, all of whom shall be chosen by the directors or trustees; provided, that only 1 of the above named offices shall be held by the same person at the same time. Subordinate officers may be appointed by the directors or trustees, and all such officers may be required to give such security for the faithful performance of the duties of their offices as the directors or trustees may require. (Mar. 3, 1901, 31 Stat. 1308, ch. 854, § 737; 1973 Ed., § 26-325.)

Cross references. — As to limitations on powers of notary public employed by trust company, see § 26-110.

Section references. — This section is referred to in § 26-809.1.

§ 26-426. Power to make bylaws; purposes thereof.

The directors or trustees shall have power to make such bylaws as they deem proper for the management or disposal of the stock and business affairs of such company, not inconsistent with the provisions of this chapter, and prescribing the duties of officers and servants that may be employed, for the appointment of all officers, and for carrying on all kinds of business within the objects and purposes of such company. (Mar. 3, 1901, 31 Stat. 1308, ch. 854, § 738; 1973 Ed., § 26-326.)

Section references. — This section is referred to in § 26-809.1.

§ 26-427. Liability of directors or trustees on declaration of dividends — Conditions.

If the directors or trustees of any company shall declare or pay any dividend the payment of which would render it insolvent, or which would create a debt against such company, they shall be jointly and severally liable as guarantors for all the debts of the company then existing, and for all that shall be thereafter contracted while they shall, respectively, remain in office. (Mar. 3, 1901, 31 Stat. 1308, ch. 854, § 739; 1973 Ed., § 26-327.)

Cross references. — As to restrictions upon payment of dividends, see § 26-106.

Section references. — This section is referred to in §§ 26-428 and 26-809.1.

§ 26-428. Same — Exemption.

If any of the directors or trustees shall object to declaring such dividends or the payment of the same, and shall at any time before the time fixed for the payment thereof file a certificate of their objection in writing with the secretary of the company and with the Recorder of Deeds of the District, they shall be exempt from the liability prescribed in § 26-427. (Mar. 3, 1901, 31 Stat. 1308, ch. 854, § 740; 1973 Ed., § 26-328.)

Section references. — This section is referred to in § 26-809.1.

§ 26-429. Directors or trustees personally liable when liabilities exceed assets.

If the liabilities of any company shall at any time exceed the amount of the fair cash value of the assets, the directors or trustees of such company assenting thereto shall be personally and individually liable for such excess to the creditors of the company, after the additional liability of the stockholders has been enforced. (Mar. 3, 1901, 31 Stat. 1308, ch. 854, § 741; 1973 Ed., § 26-329.)

Section references. — This section is referred to in § 26-809.1.

§ 26-430. Fiduciary not liable as stockholder; liability of estate and funds.

No person holding stock in such company as personal representative, guardian, or trustee shall be personally subject to any liability as stockholder of such company, but the estate and funds in the hands of such personal representative, guardian, or trustee shall be liable in like manner and to the same extent as the testator or intestate or the ward or the person interested in such trust fund would have been if he had been living and competent to act and hold the stock in his own name. (Mar. 3, 1901, 31 Stat. 1308, ch. 854, § 742; 1973 Ed., § 26-330; June 24, 1980, D.C. Law 3-72, § 207(f), 27 DCR 2155.)

Section references. — This section is referred to in § 26-809.1.

Legislative history of Law 3-72. — See note to § 26-409.

§ 26-431. Increase or decrease of capital stock.

(a) Any corporation which may be formed under this chapter may increase its capital stock by complying with the provisions of this chapter to any amount which may be deemed sufficient and proper for the purposes of the corporation.

(b) Any company transacting the business of a trust company heretofore or hereafter organized or operating under the provisions of this chapter may by the vote of shareholders owning two-thirds of its capital stock reduce its capital to any sum not below the amount required by this chapter; but no such reduction shall be made until the amount of the proposed reduction has been reported to the Superintendent of Banking and Financial Institutions and such reduction has been approved by said Superintendent of Banking and Financial Institutions, and no shareholder shall be entitled to any distribution of cash or other assets by reason of any reduction of the common capital of any such corporation unless such distribution shall have been approved by the Superintendent of Banking and Financial Institutions and by the affirmative vote of at least two-thirds of the shares of stock outstanding. (Mar. 3, 1901, 31 Stat. 1309, ch. 854, § 743; June 20, 1938, 52 Stat. 780, ch. 527; 1973 Ed.,

§ 26-331; Nov. 23, 1985, D.C. Law 6-63, § 106(a)(15), as added Apr. 11, 1986, D.C. Law 6-107, § 2(k), 33 DCR 1168.)

Cross references. — As to trust companies, see § 26-101, 26-102, 26-104 to 26-110, 26-201 to 26-204, 26-301 to 26-303, 26-401 to 26-407, 26-412, and 26-413.

As to capital stock, see § 26-416.

Section references. — This section is referred to in § 26-809.1.

Legislative history of Law 6-107. — See note to § 26-403.

§ 26-432. Copy of certificate as evidence.

A copy of any certificate of incorporation filed in pursuance of this chapter, certified by the Recorder of Deeds to be a true copy and the whole of such certificate, shall be received in all courts and places as presumptive legal evidence of the facts therein stated. (Mar. 3, 1901, 31 Stat. 1309, ch. 854, § 744; 1973 Ed., § 26-332.)

Section references. — This section is referred to in § 26-809.1.

§ 26-433. Security required for performance of fiduciary duties; liability thereon.

No bond or other collateral security, except as hereinafter stated, shall be required from any trust company incorporated under this chapter for and in respect to any trust, nor when appointed trustee, guardian, receiver, personal representative, special administrator, committee of the estate of a lunatic or idiot, or other fiduciary appointment; but the capital stock subscribed for or taken, and all property owned by said company and the amount for which said stockholders shall be liable in excess of their stock, shall be taken and considered as the security required by law for the faithful performance of its duties, and shall be absolutely liable in case of any default whatever; and in case of the insolvency or dissolution of said company, the debts due from the said company as trustee, guardian, receiver, personal representative, special administrator, or committee of the estate of lunatics, idiots, or any other fiduciary appointment shall have a preference. (Mar. 3, 1901, 31 Stat. 1309, ch. 854, § 745; 1973 Ed., § 26-333; June 24, 1980, D.C. Law 3-72, § 207(g), 27 DCR 2155.)

Section references. — This section is referred to in § 26-809.1.

Legislative history of Law 3-72. — See note to § 26-409.

§ 26-434. Powers of probate court.

The court having probate jurisdiction, or any judge thereof, shall have power to make orders respecting such company whenever it shall have been appointed trustee, guardian, receiver, personal representative, special administrator, committee of the estate of a lunatic, idiot, or any other fiduciary, and require the said company to render all accounts which might lawfully be made or required by any court or any judge thereof if such trustee, guardian, receiver, personal representative, special administrator, committee of the

estate of a lunatic or idiot, or fiduciary were a natural person. And said court, or any judge thereof, at any time, on application of any person interested, may appoint some suitable person to examine into the affairs and standing of such companies, who shall make a full report thereof to the court, and said court, or any judge thereof, may at any time, in its discretion, require of said company a bond with sureties or other security for the faithful performance of its obligations, and such sureties or other security shall be liable to the same extent and in the same manner as if given or pledged by a natural person. (Mar. 3, 1901, 31 Stat. 1309, ch. 854, § 746; June 25, 1936, 49 Stat. 1921, ch. 804; June 25, 1948, 62 Stat. 991, ch. 646, § 32(a), (b); May 24, 1949, 63 Stat. 107, ch. 139, § 127; July 29, 1970, 84 Stat. 576, Pub. L. 91-358, title I, § 158(c)(4); 1973 Ed., § 26-334; June 24, 1980, D.C. Law 3-72, § 207(h), 27 DCR 2155.)

Cross references. — As to probate jurisdiction, see §§ 11-501 and 11-921.

Legislative history of Law 3-72. — See note to § 26-409.

Section references. — This section is referred to in § 26-809.1.

§ 26-435. Compliance required of foreign corporations or companies.

No corporation or company organized by virtue of the laws of any of the states of this Union shall carry on in the District of Columbia any of the kinds of business named in this chapter without strict compliance in all particulars with the provisions of this chapter for the government of such corporations formed under it, and each one of the officers of the corporation or company so offending shall be punished by a fine not exceeding \$1,000 or imprisonment not exceeding 1 year, or by both fine and imprisonment, in the discretion of the court. (Mar. 3, 1901, 31 Stat. 1309, ch. 854, § 747; Mar. 4, 1933, 47 Stat. 1567, ch. 274, § 5; 1973 Ed., § 26-335.)

Cross references. — As to suits against national banking associations applying to this section, see § 26-104.

Section references. — This section is referred to in § 26-809.1.

As to semiannual publication of financial statement, see § 29-105.

§ 26-436. Right of Congress to amend or repeal chapter; remedies preserved.

Congress may at any time alter, amend, or repeal this chapter, but any such amendment or repeal shall not, nor shall the dissolution of any company formed under this chapter, take away or impair any remedy given against such corporation, its stockholders, or officers for any liability or penalty which shall have been previously incurred. (Mar. 3, 1901, 31 Stat. 1309, ch. 854, § 748; 1973 Ed., § 26-336.)

Section references. — This section is referred to in § 26-809.1.

CHAPTER 5. BUILDING ASSOCIATIONS.

Sec.	Sec.
26-501. Formation; general nature and powers.	26-508. Same — Security.
26-502. Powers as to stock.	26-509. Same — Participation of all shares in profits.
26-503. Bonus to be paid by late subscribers.	26-510. Same — Redemption on failure to bid.
26-504. Object; supervision by federal board; strict compliance with provisions required; exception; violations.	26-511. Withdrawal by shareholder.
26-505. Remaining powers, duties, and functions of Comptroller transferred to Superintendent of Banking and Financial Institutions.	26-512. Repayment of advances.
26-506. Foreign associations.	26-513. Forfeiture of stock.
26-507. Advancements — Payments of premiums.	26-514. Foreclosure of advanced shareholder's security.
	26-515. Purchase of real property.
	26-516. Purchase of federal securities.
	26-517. Exchange of securities or real estate for federal bonds.

§ 26-501. Formation; general nature and powers.

(a) Any 5 or more persons who desire to form an incorporated building or homestead association, all being citizens of the United States, and a majority of them residents of the District of Columbia, may make, sign, seal, and acknowledge, before some officer authorized to take the acknowledgment of deeds, and file for record in the Office of the Recorder of Deeds, a certificate, in writing, to the same effect as that required in Chapter 2 of Title 29 for the formation of the corporations therein mentioned.

(b) When such certificate shall have been filed for record as aforesaid, the persons who have signed and acknowledged the same, and their successors, shall become and be a body politic and corporate, in fact and in law, by the name stated in the certificate, and by that name have succession and be capable of suing and being sued in the courts, of the District, and of purchasing, holding, and conveying such real estate as may be necessary to the conduct of its business, and to make reasonable bylaws not inconsistent herewith. (Mar. 3, 1901, 31 Stat. 1298, ch. 854, §§ 687, 688; 1973 Ed., § 26-401.)

Cross references. — As to requirement of approval of building associations by Superintendent of Banking & Financial Institutions see § 26-103.

As to exemption from operation of money lenders law, see § 26-710.

As to formal requisites for real estate conveyances, see § 45-502.

Section references. — This section is referred to in § 26-809.1.

Transfer of functions. — Pursuant to Reorganization Plan No. 3 of 1992, effective Jan-

uary 20, 1993, unless another date was designated by the Mayor under sec. V of the Plan, the D.C. Office of Banking and Financial Institutions ("OBFI") is hereby transferred from the Deputy Mayor for Economic Development ("DMED") control center to a separate OBFI control center/responsibility center. OBFI will continue to be administered by the Superintendent and will remain a part of the economic development cluster reporting to the Mayor.

Cited in *Goodman v. Perpetual Bldg. Ass'n*, 320 F. Supp. 20 (D.D.C. 1970).

§ 26-502. Powers as to stock.

Such corporation shall have power, in its certificate of incorporation or in its bylaws, to provide that its shares of stock may be issued in series; to limit the number of shares which each stockholder may be allowed to hold; to prescribe

the entrance fee to be paid by each stockholder at the time of subscribing; and to regulate the instalments to be paid on each share and the times at which they shall be payable. It shall also have power to enforce the payment of all installments and other dues by such fines and forfeitures as its bylaws may from time to time provide. (Mar. 3, 1901, 31 Stat. 1299, ch. 854, § 689; 1973 Ed., § 26-402.)

Section references. — This section is referred to in § 26-809.1.

§ 26-503. Bonus to be paid by late subscribers.

Any person applying for membership or stock after a month from the time of the incorporation may be required to pay on subscribing such bonus or assessment as may be fixed by said bylaws in order to place said new members or stockholders on a footing with the original members and others holding stock at the time of such application. (Mar. 3, 1901, 31 Stat. 1299, ch. 854, § 690; 1973 Ed., § 26-403.)

Section references. — This section is referred to in § 26-809.1.

§ 26-504. Object; supervision by federal board; strict compliance with provisions required; exception; violations.

(a) The object of such corporation shall be the accumulation of a capital in money to be derived from the savings and accumulations by the members thereof, to be paid into said corporation in such sums and at such times as may be designated by the bylaws of said corporation, from which the members thereof may obtain advances upon their shares of stock; provided, that the Federal Home Loan Bank Board is authorized, whenever such Board may deem it useful; to cause examination to be made into the condition of any building association incorporated under the provisions of this chapter, as well as any other building or loan association located or doing business in the District of Columbia. The expenses necessarily incurred in making any such examination shall be paid by such association to the Federal Home Loan Bank Board at the time of the making of such examination; and provided further, that every building or loan association located and doing business in the District of Columbia shall make to the Federal Home Loan Bank Board at least 1 report during each year, according to the form which may be prescribed by such Board, verified by the oath or affirmation of the president or secretary of such association and attested by the signature of at least 3 of the directors.

(b) The Federal Home Loan Bank Board shall also have power to take possession of any company or association whenever in the Board's judgment any such company or association is insolvent or is knowingly violating the laws under which it is operated and to liquidate the same in the manner provided in rules and regulations which said Board is hereby authorized to adopt, and said Board may also provide in such rules and regulations a procedure for the

voluntary liquidation of any such company or association; and if any such company or association which has not gone into liquidation and for which a receiver has not already been appointed for other lawful cause shall discontinue its operations for a period of 60 days, the Federal Home Loan Bank Board may, if such Board deems it advisable, appoint a receiver for such company or association; provided further, that from and after the 1st day of July, 1909, no person, company, association, copartnership, or corporation shall conduct or carry on in the District of Columbia the kind of business named in this section and § 26-506, without strict compliance in all particulars with the provisions of this section and § 26-506; provided, that building associations organized and in actual operation before March 4, 1909, need not be incorporated. After April 11, 1986, the preceding language in this section shall not apply to entities formed under this chapter. Thereafter the Superintendent of Banking and Financial Institutions shall supervise these entities.

(c) Any person, officer, or agent of any company, firm, or corporation who shall wilfully violate any of the provisions of this section shall be deemed guilty of a misdemeanor, and shall on conviction thereof be punished by a fine of not more than \$1,000 or by imprisonment not longer than 2 years, or by both said punishments, in the discretion of the court. That any wilful false swearing in regard to any certificate, or report, or public notice required by the provisions of this section and § 26-506 shall be perjury, and shall be punished as such according to the laws of the District of Columbia. And any misappropriation of any of the money of any corporation or company, formed under or availing itself of the privileges of this section and § 26-506, or of any building or loan association located or doing business in the District of Columbia, or any money, funds, or property intrusted to any such corporation, company, or association, shall be held to be theft and shall be punished as such under the laws of said District. (Mar. 3, 1901, 31 Stat. 1299, ch. 854, § 691; Mar. 4, 1909, 35 Stat. 1058, ch. 303, § 1; Sept. 15, 1951, 65 Stat. 323, ch. 404, § 1; 1973 Ed., § 26-404; Dec. 1, 1982, D.C. Law 4-164, § 601(i), 29 DCR 3976; Nov. 23, 1985, D.C. Law 6-63, § 106(a)(2), as added Apr. 11, 1986, D.C. Law 6-107, § 2(k), 33 DCR 1168.)

Cross references. — As to theft, see § 22-3811.

As to powers and duties of Comptroller concerning financial institutions, see §§ 26-101 to 26-103.

As to voluntary liquidation and dissolution of solvent financial corporations, see § 26-103.

Section references. — This section is referred to in §§ 26-802.1 and 26-809.1.

Legislative history of Law 4-164. — Law 4-164, the “District of Columbia Theft and White collar Crime Act of 1982,” was introduced in Council and assigned Bill No. 4-133, which was referred to the Committee on the Judiciary. The Bill was adopted on first, amended first and second readings on June 22, 1982, July 6, 1982, and July 20, 1982, respectively. Signed by the Mayor on August 4, 1982, it was assigned

Act No. 4-238 and transmitted to both Houses of Congress for its review.

Legislative history of Law 6-107. — Law 6-107, the “District of Columbia Regional Interstate Banking Act of 1985 Amendment Act of 1985,” was introduced in Council and assigned Bill No. 6-276, which was referred to the Committee on Housing and Economic Development. The Bill was adopted on first and second readings on January 14, 1986 and January 28, 1986, respectively. Signed by the Mayor on February 14, 1986, it was assigned Act No. 6-136 and transmitted to both Houses of Congress for its review.

References in text. — The “Home Loan Bank Board,” formerly referred to throughout subsections (a) and (b) of this section, was changed to “Federal Home Loan Bank Board” by § 109(a)(3) of the Act of August 11, 1955, 69

Stat. 640. Subsequently the Federal Home Loan Bank Board was abolished. For provisions relating to the abolition of the Federal Home Loan Bank Board and the transfer of functions, personnel and property of that agency, see §§ 401 to 406 of Pub.L. 101-73, set out as a note under 12 U.S.C. § 1437.

Application of Law 4-164. — Section 701(a) of D.C. Law 4-164 provided that the provisions of the act shall apply only to offenses committed on or after the effective date of the

act, that an offense is committed after the effective date of the act only if all elements of the offense occurred after the effective date, and that prosecutions for offenses committed prior to the effective date of the act shall be governed by the prior law, which is continued in effect for that purpose as if the act was not in force.

Cited in *Goodman v. Perpetual Bldg. Ass'n*, 320 F. Supp. 20 (D.D.C. 1970).

§ 26-505. Remaining powers, duties, and functions of Comptroller transferred to Superintendent of Banking and Financial Institutions.

Any powers, duties, and functions of the Comptroller of the Currency with respect to building associations and building and loan associations operating in the District of Columbia which are not transferred to the Federal Home Loan Bank Board by the specific statutory amendments herein contained are also hereby transferred from the Comptroller of the Currency to the Federal Home Loan Bank Board. After April 11, 1986, the powers, duties, and functions referred to in this section shall reside in the Superintendent of Banking and Financial Institutions. (Sept. 15, 1951, 65 Stat. 324, ch. 404, § 4; 1973 Ed., § 26-404a; Nov. 23, 1985, D.C. Law 6-63, § 106(e), as added Apr. 11, 1986, D.C. Law 6-107, § 2(k), 33 DCR 1168.)

Section references. — This section is referred to in § 26-809.1.

Legislative history of Law 6-107. — See note to § 26-504.

References in text. — The “Home Loan Bank Board,” formerly referred to throughout this section, was changed to “Federal Home Loan Bank Board” by § 109(a)(3) of the Act of August 11, 1955, 69 Stat. 640. Subsequently, the Federal Home Loan Bank Board was abol-

ished. For provisions relating to the abolition of the Federal Home Loan Bank Board and the transfer of functions, personnel and property of that agency, see §§ 401 to 406 of Pub.L. 101-73, set out as a note under 12 U.S.C. § 1437.

The words “specific statutory amendments,” referred to in the section, means the amendments made by §§ 1 to 3 of the Act of September 15, 1951, 65 Stat. 324, ch. 404.

§ 26-506. Foreign associations.

(a) No foreign association shall make loans of any kind or transact any building and loan business within the District of Columbia or maintain an office in the District of Columbia for the purpose of transacting such business until it procures from the Superintendent of Banking and Financial Institutions a certificate of authority to do such business in said District, after complying with the following provisions:

(1) It shall deposit with the District of Columbia Treasurer \$50,000 in cash, or bonds of the United States, or bonds which the United States guarantees the payment of both principal and interest. A foreign association may collect and use the interest on securities deposited with the District of Columbia Treasurer, as hereinabove provided, so long as it fulfills its obligations and complies with the laws of the District of Columbia. It may also exchange them for other securities of the United States or for cash. The deposit

made by a foreign association with the Office of the Treasurer shall be held as security for all claims of residents of the District of Columbia against such association, and be liable for all judgments or decrees thereon, and subjected to the payment thereof in the same manner as the property of other nonresidents. Should an association cease to do business in said District, the District of Columbia Treasurer, upon a certificate from the Superintendent of Banking and Financial Institutions, may release securities in his discretion, retaining sufficient to satisfy all outstanding liabilities.

(2) It shall file with the Superintendent of Banking and Financial Institutions a certified copy of its charter, constitution, and bylaws, and other rules and regulations showing its manner of conducting business, together with a statement such as is required semiannually from all associations.

(3) It shall file with the Superintendent of Banking and Financial Institutions a power of attorney appointing a citizen of the District of Columbia, resident within said District, the agent or attorney for such foreign association upon whom process of law can be served. There must also be filed a certified copy of the vote or resolution of the directors appointing such agent or attorney, which appointment shall continue until another agent or attorney is substituted, and said writing or power of attorney shall stipulate and agree on the part of such foreign association making the same that any lawful process against said association, which is served on such agent or attorney, shall be of the same legal force and validity as if served on such association within the District of Columbia; and, also, that in the case of the death or absence of the agent or attorney so appointed, service or process may be made upon the Superintendent of Banking and Financial Institutions, and such power of attorney cannot be revoked or modified (except that a new one may be substituted) so long as any liability remains outstanding against such foreign association in the District of Columbia. The term "process," used above, shall be held and deemed to include any writ, summons, or order whereby any action, suit, or proceeding shall be commenced, or which shall be issued in or upon any action, suit, or proceeding by any court, officer, or magistrate.

(4) It shall pay to the Collector of Taxes the following fees:

(A) For filing an application for admission to do business in the District of Columbia, \$500; and

(B) For each certificate of authority and annual renewal thereof, \$200.

(a-1) The Superintendent of Banking and Financial Institutions shall not issue a certificate of authority to any foreign association pursuant to this subsection after October 12, 1988. After October 12, 1988, the certificate of authority shall be issued pursuant to § 26-904. The Superintendent may consider an application for a certificate of authority, which was filed pursuant to this subsection, prior to October 12, 1988 and may grant the application if the applicant meets the requirements imposed by § 26-902(a)(3) and any other requirements imposed by the Superintendent. The Superintendent may enforce any commitments made by an applicant under this section in accordance with the procedures set forth in § 26-902(a)(4).

(b) When a foreign association has complied with the provisions of paragraph (3) of subsection (a) of this section, and the Superintendent of Banking

and Financial Institutions is satisfied that it is doing or will do its building and loan business in the District of Columbia in accordance with the laws of the District of Columbia, such Superintendent may issue a Superintendent's certificate of authority to such foreign association to do a building and loan business in the District of Columbia. Annually thereafter, if the Superintendent of Banking and Financial Institutions is satisfied as herein provided, the Superintendent shall issue a renewal of such certificate.

(c) Should the Superintendent of Banking and Financial Institutions find that such foreign association does not conduct its building and loan business in accordance with law, or that the affairs of such association are in unsafe condition, or if such foreign association refuses to permit examination to be made, the Superintendent of Banking and Financial Institutions may revoke the certificate of authority granted, after 90-days notice, to such foreign association to do a building and loan business in the District of Columbia; provided, that upon revocation of such certificate of authority the Superintendent of Banking and Financial Institutions shall mail a notice thereof to the home office of such foreign association and cause a similar notice to be published in at least 1 daily newspaper of general circulation in the District of Columbia. After so notifying said home office and after the publication of said notice, it shall be unlawful for any agent of such foreign association to receive any further payments from shareholders residing in the District of Columbia.

(d) Every foreign association doing a building and loan business in the District of Columbia shall be subject to the same examination as are domestic associations and such examination may include examination of all subsidiaries of such foreign associations and all business operations wherever apparent; provided, that the Superintendent of Banking and Financial Institutions may accept reports of examination by other supervisory agents in lieu of making such examinations and provided that all the actual and necessary expenses of such examinations of such foreign associations shall be paid by the association examined.

(e) Whenever any taxes, fines, penalties, fees, licenses, or conditions precedent are imposed by the laws of any state upon building and loan associations organized or incorporated under the laws of the District of Columbia, and doing business in the said state, in excess of the taxes, fines, penalties, fees, licenses, or conditions precedent imposed by the laws of the District of Columbia upon foreign associations doing a building and loan business in the District of Columbia, the same taxes, fines, penalties, fees, licenses, or conditions precedent shall be imposed upon every association incorporated under the laws of such state doing, or applying to do, a building and loan business in the District of Columbia, so long as such excess taxes, fines, penalties, fees, licenses, or conditions precedent are imposed by such state; and upon the failure of any association incorporated under the laws of such state to comply therewith the Superintendent of Banking and Financial Institutions shall revoke the certificate of authority of such association to do a building and loan business in the District of Columbia or shall refuse to grant such certificate of authority in the first instance.

(f) A foreign association which does a building and loan business in the District of Columbia without first complying with the provisions of this

chapter, or which wilfully violates or fails to comply with the provisions of laws relating to foreign associations, shall forfeit and pay not less than \$25 or more than \$500, to be recovered by an action in the name of the District of Columbia and on collection paid into the Office of the Treasurer. (Mar. 3, 1901, ch. 854, § 691a; Mar. 4, 1909, 35 Stat. 1059, ch. 303, § 2; July 18, 1939, 53 Stat. 1060, ch. 322, § 1; Sept. 15, 1951, 65 Stat. 323, ch. 404, § 2; 1973 Ed., § 26-405; Nov. 23, 1985, D.C. Law 6-63, § 106(a)(3), as added Apr. 11, 1986, D.C. Law 6-107, § 2(k), 33 DCR 1168; Apr. 30, 1988, D.C. Law 7-104, § 44, 35 DCR 147; Oct. 12, 1988, D.C. Law 7-175, § 18, 35 DCR 6133.)

Cross references. — As to powers and duties of Comptroller concerning financial institutions, see §§ 26-101 to 26-103.

As to admission of foreign associations, see § 26-103.

As to semiannual publication of financial statements, see § 29-105.

Section references. — This section is referred to in §§ 26-103, 26-504, and 26-809.1.

Legislative history of Law 6-107. — See note to § 26-504.

Legislative history of Law 7-104. — Law 7-104, the “Technical Amendments Act of 1987,” was introduced in Council and assigned Bill No. 7-346, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on November 24, 1987, and December 8, 1987, respectively. Signed by the Mayor on December 22, 1987, it was assigned Act No. 7-124 and transmitted to both Houses of Congress for its review.

Legislative history of Law 7-175. — Law 7-175, the “District of Columbia Savings and Loan Acquisition Amendment Act of 1988,” was introduced in Council and assigned Bill No. 7-399, which was referred to the Committee on Housing and Economic Development. The Bill was adopted on first and second readings on June 28, 1988, and July 12, 1988, respectively. Signed by the Mayor on August 1, 1988, it was assigned Act No. 7-235 and transmitted to both Houses of Congress for its review.

Office of Collector of Taxes abolished. — The Office of the Collector of Taxes was abolished and functions thereof transferred in the Board of Commissioners of the District of Columbia by Reorganization Plan No. 5 of 1952. All functions of the Office of the Collector of

Taxes including the functions of all officers, employees and subordinate agencies were transferred to the Director, Department of General Administration by Reorganization Order No. 3, dated August 28, 1952. Reorganization Order No. 20, dated November 10, 1952, transferred the functions of the Collector of Taxes to the Finance Office. The same Order provided for the Office of the Collector of Taxes headed by a Collector in the Finance Office, and abolished the previously existing Office of the Collector of Taxes. Reorganization Order No. 20 was superseded and replaced by Organization Order No. 121, dated December 12, 1957, which provided that the Finance Office (consisting of the Office of the Finance Officer, Property Tax Division, Revenue Division, Treasury Division, Accounting Division, and Data Processing Division) would continue under the direction and control of the Director of General Administration, and that the Treasury Division would perform the function of collecting revenues of the District of Columbia and depositing the same with the Treasurer of the United States. Organization Order No. 121 was revoked by Organization Order No. 3, dated December 13, 1967, Part IVC of which prescribed the functions of the Finance Office within the newly established Department of General Administration. The executive functions of the Board of Commissioners were transferred to the Commissioner of the District of Columbia by § 401 of Reorganization Plan No. 3 of 1967. Functions of the Finance Office as stated in Part IVC of Organization Order No. 3 were transferred to the Director of the Department of Finance and Revenue by Commissioner’s Order No. 69-96, dated March 7, 1969.

§ 26-507. Advancements — Payments of premiums.

The moneys accumulated from time to time shall be offered to such shareholder or shareholders as shall bid the highest premium for preference or priority of right to an advancement of the ultimate value of 1 or more of his or their respective shares. The said premium shall consist of a percentage on the amount of the advance and shall be deemed to be a consideration or bonus paid by the shareholder for the present and immediate use and possession of the

future or ultimate value of the share so advanced, and shall not be deemed usurious. The said premium may either be deducted in advance from the amount to be advanced to the shareholder or be made payable in monthly installments, in addition to legal interest on the sum advanced, as the bylaws may provide. (Mar. 3, 1901, 31 Stat. 1299, ch. 854, § 692; 1973 Ed., § 26-406.)

Section references. — This section is referred to in § 26-809.1.

Usurious provision not retroactive. — The provision that premiums to be charged by building associations shall not be deemed usurious, is not retroactive. *Washington Nat'l Bldg. & Loan Ass'n v. Fiske*, 20 App. D.C. 514 (1902), cert. denied, 188 U.S. 740, 23 S. Ct. 848, 47 L. Ed. 677 (1903).

Test to determine whether building association loan is usurious is usually whether the promise to pay the sum above legal interest depends upon a contingency, and not upon the happening of a certain event. *Whelpley v. Ross*, 25 App. D.C. 207 (1905).

Premium void as usurious payment. — A provision of a building association mortgage

that the borrower, instead of paying the usual premium, is to pay monthly during the continuance of the mortgage, a specified sum called premium, in addition to the legal rate of interest, is void as usurious payment. *Middle States Loan, Bldg. & Constr. Co. v. Baker*, 19 App. D.C. 1 (1901).

When borrower from building association surrenders his stock to the association upon mortgage loan being made to him, he becomes a creditor of the association and when an accounting is made, he is to be charged with the amount actually received by him on account of the loan, with interest, whether by way of the premium, dues or interest. *Croissant v. Empire State Realty Co.*, 29 App. D.C. 538 (1907).

§ 26-508. Same — Security.

For every advance made as aforesaid a bond in a penalty equal to the ultimate value of the shares advanced may be required, secured by a first mortgage or deed of trust on real estate, and a pledge of the shares advanced upon, as additional or collateral security, which bond shall be conditioned for the payment at the stated meetings of the corporation of the monthly dues on the share so advanced upon and the interest on the sum advanced, and the installments of premium, if made so payable, and all fines chargeable upon arrears of payments, until said shares shall reach their ultimate value aforesaid, or said advance be otherwise canceled or discharged. (Mar. 3, 1901, 31 Stat. 1299, ch. 854, § 693; 1973 Ed., § 26-407.)

Section references. — This section is referred to in § 26-809.1.

§ 26-509. Same — Participation of all shares in profits.

The shares advanced upon shall participate equally with the other shares in the profits and the amounts paid by the advanced shareholders, together with such proportion of the profits accrued or such rate of interest as said bylaws may determine, the same as allowed on shares withdrawn not advanced upon, less all fines and a proportionate part of losses and other charges incurred. (Mar. 3, 1901, 31 Stat. 1299, ch. 854, § 694; 1973 Ed., § 26-408.)

Section references. — This section is referred to in § 26-809.1.

§ 26-510. Same — Redemption on failure to bid.

Where advances from the funds on hand cannot be made on satisfactory terms, the shareholders failing to bid therefor, the bylaws may provide for the redemption of shares of stock, with the consent of the shareholders, and in case that cannot be done, for the involuntary withdrawal and cancelation of shares, the said shares to be selected by lot, always from the oldest series, until exhausted, or the funds to be applied ratably among the owners of shares of the same series. (Mar. 3, 1901, 31 Stat. 1300, ch. 854, § 695; 1973 Ed., § 26-409.)

Section references. — This section is referred to in § 26-809.1.

§ 26-511. Withdrawal by shareholder.

A shareholder shall be entitled to withdraw at any time, by giving such notice as the bylaws may require, where no advance has been made on his shares, in which case he shall be entitled to receive the amount of dues paid in by him on each of his shares, together with such proportion of the profits accrued or such rate of interest as said bylaws may determine, less all fines due and a proportionate part of all losses and other charges incurred; provided, that not more than one-half of the funds in the treasury at any time shall be applicable to the demands of the withdrawing shareholders without the consent of the board of trustees. (Mar. 3, 1901, 31 Stat. 1300, ch. 854, § 696; 1973 Ed., § 26-410.)

Section references. — This section is referred to in § 26-809.1.

§ 26-512. Repayment of advances.

A shareholder who has been advanced may at any time repay his advance upon application to the corporation, whereupon, on settlement of his account, he shall be charged with the full amount of the advance and of the accrued installments of the premium, if that has been added to the advancement and made payable in instalments, together with all monthly dues, interest, and fines accrued and charged, and shall receive credit for all monthly dues paid on his shares and the profits thereon the same as are allowed under the bylaws on shares withdrawn not advanced upon, and, if the premium has been deducted in advance, with such proportion of the premium as the bylaws may direct, and the balance remaining due, over and above such credits, shall be received by said corporation in satisfaction and discharge of said advance; provided, that in case of the insolvency of the association, he shall not be entitled to credit for the full amount of dues paid by him, but shall only be entitled to a dividend upon said amount, in common with the nonadvanced shareholders. (Mar. 3, 1901, 31 Stat. 1300, ch. 854, § 697; 1973 Ed., § 26-411.)

Section references. — This section is referred to in § 26-809.1.

§ 26-513. Forfeiture of stock.

Any nonadvanced shareholder failing to pay the instalments due on his share and the fines due from him for such time as the bylaws shall determine, shall forfeit his stock, but may, on application, receive a return of the amount paid in on account of his stock, less the accrued fines. (Mar. 3, 1901, 31 Stat. 1300, ch. 854, § 698; 1973 Ed., § 26-412.)

Section references. — This section is referred to in § 26-809.1.

§ 26-514. Foreclosure of advanced shareholder's security.

In case any advanced shareholder shall fail to pay all dues, interest, or premiums and shall be in arrears for any part of the same for the period of 2 months, the payment of the same and of the principal of the advance may be enforced by a foreclosure of the securities given for the same, and if upon a statement of account, as in case of a voluntary settlement of said advance, as hereinbefore authorized, there shall be any surplus of the proceeds of sale of the property given as security over the amount found due from such advanced shareholder, together with all costs incurred by the corporation, such surplus shall be paid to said defaulting shareholder, or his assigns, and his shares of stock so advanced upon shall be the property of the corporation. (Mar. 3, 1901, 31 Stat. 1300, ch. 854, § 699; 1973 Ed., § 26-413.)

Section references. — This section is referred to in § 26-809.1.

§ 26-515. Purchase of real property.

Such corporation shall not invest its fund in any real estate except what is necessary for the conduct of its business, but may purchase such property at sales made upon foreclosure of mortgages or in satisfaction of judgments or other liens held by it; provided, that such property so purchased be sold within a reasonable time thereafter. (Mar. 3, 1901, 31 Stat. 1300, ch. 854, § 700; 1973 Ed., § 26-414.)

Cross references. — As to investment in obligations of Washington Metropolitan Area Transit Authority, see § 1-2461.

As to formal requisites for conveyances of real estate, see § 45-502.

As to investment by building associations in veterans' loans, see § 45-2301.

Section references. — This section is referred to in § 26-809.1.

§ 26-516. Purchase of federal securities.

The board of directors of any building association incorporated or unincorporated, organized and existing under the laws of the District of Columbia to do or now doing in the District of Columbia a building association business, in their discretion, may purchase the bonds of the Home Owners' Loan Corporation created pursuant to the authority of the Home Owners' Loan Act of 1933, approved June 13, 1933 (and said association is hereby permitted to carry said

bonds as an asset at the par value of said bonds) or may subscribe and pay for shares of any federal corporation created or authorized by law to lend money to building and loan associations. (Mar. 3, 1901, ch. 854, § 55; Mar. 27, 1934, 48 Stat. 506, ch. 96; 1973 Ed., § 26-415.)

Section references. — This section is referred to in § 26-809.1.

References in text. — The Home Owners' Loan Corporation, referred to near the middle of this section, was dissolved by the Act of June 30, 1953, 67 Stat. 126, ch. 170, § 21.

The Home Owners' Loan Act of 1933, approved June 13, 1933, referred to near the middle of this section, is codified in Chapter 12 of Title 12, United States Code, and, as amended, is referred to as the "Home Owners' Loan Act."

§ 26-517. Exchange of securities or real estate for federal bonds.

Any building association incorporated or unincorporated, organized and existing under the laws of the District of Columbia, to do or now doing, in the District of Columbia, a building association business, is authorized and empowered to exchange mortgages or deeds of trust or the notes or bonds secured thereby or other obligations and liens secured on real estate or any real estate which it may have or hold, for the bonds of the Home Owners' Loan Corporation created pursuant to the authority of the Home Owners' Loan Act of 1933, approved June 13, 1933, and said association is hereby authorized to carry said bonds as an asset at the par value of said bonds. (Mar. 3, 1901, ch. 854, § 56; Mar. 27, 1934, 48 Stat. 506, ch. 96; 1973 Ed., § 26-416.)

Section references. — This section is referred to in § 26-809.1.

References in text. — The Home Owners' Loan Corporation, referred to in this section, was dissolved by the Act of June 30, 1953, 67 Stat. 126, ch. 170, § 21.

The Home Owners' Loan Act of 1933, approved June 13, 1933, referred to in this section, is codified in Chapter 12 of Title 12, United States Code, and, as amended, is referred to as the "Home Owners' Loan Act."

CHAPTER 6. CREDIT UNIONS.

Sec.	Sec.
26-601. Conversion of District credit unions into federal credit unions — Procedure.	sions; fees; liquidation of existing loans; bylaws.
26-602. Same — Approval; effect thereof.	26-604. Repeal of District of Columbia Credit Unions Act.
26-603. Same — Applicability of federal provi-	

§ 26-601. Conversion of District credit unions into federal credit unions — Procedure.

Any credit union organized under the District of Columbia Credit Unions Act (47 Stat. 326), as amended, may apply for conversion into a federal credit union by filing with the Administrator of the National Credit Union Administration (hereinafter referred to as the Administrator), pursuant to a resolution adopted by a majority of its directors, an organization certificate meeting the requirements of § 4 of the Federal Credit Union Act (§ 1753 of Title 12, United States Code), as amended. (Aug. 1, 1964, 78 Stat. 377, Pub. L. 88-395, § 1; 1973 Ed., § 26-519.)

Section references. — This section is referred to in §§ 26-603, and 26-809.1.

References in text. — The “Director of the Bureau of Federal Credit Unions” formerly referred to in this section, was changed to “Administrator of the National Credit Union Administration” by §§ 1 to 3 of the Act of March 10, 1970, 84 Stat. 49.

Cited in *Ali Baba Co. v. Wilco, Inc.*, App. D.C., 482 A.2d 418 (1984).

§ 26-602. Same — Approval; effect thereof.

The Administrator shall approve any such organization certificate meeting such requirements. Upon such approval, the applicant credit union shall become a federal credit union, and shall be vested with all of the assets and shall continue responsible for all of the obligations of such applicant credit union to the same extent as though the conversion had not taken place. (Aug. 1, 1964, 78 Stat. 377, Pub. L. 88-395, § 2; 1973 Ed., § 26-520.)

Section references. — This section is referred to in §§ 26-603 and 26-809.1.

§ 26-603. Same — Applicability of federal provisions; fees; liquidation of existing loans; bylaws.

Any District of Columbia credit union converting into a federal credit union in accordance with §§ 26-601 to 26-604 shall thereupon be subject to the limitations, vested with the powers, and charged with the liabilities conferred and imposed by the Federal Credit Union Act (§ 1751 et seq. of Title 12, United States Code) upon credit unions organized thereunder, except that:

(1) No fee shall be imposed upon a credit union converting pursuant to §§ 26-601 to 26-604 as an incident to its conversion;

(2) Any loan or investment made by a credit union converting pursuant to §§ 26-601 to 26-604 in conformity with the District of Columbia Credit Unions Act prior to its conversion, which does not conform to the requirements of the

Federal Credit Union Act and is still outstanding at the time of conversion, shall be liquidated at or before its maturity or, if it has no maturity date, in a prudent manner and within a reasonable period of time; and

(3) A credit union converting pursuant to §§ 26-601 to 26-604 shall submit proposed bylaws to the Administrator for his approval after its conversion, but not later than 30 days following its next annual meeting or 6 months after the enactment of §§ 26-601 to 26-604, whichever is later; provided, that any existing bylaw inconsistent with any other requirements of the Federal Credit Union Act shall be deemed null and void. (Aug. 1, 1964, 78 Stat. 377, Pub. L. 88-395, § 3; 1973 Ed., § 26-521.)

Section references. — This section is referred to in § 26-809.1.

§ 26-604. Repeal of District of Columbia Credit Unions Act.

Effective 30 days after August 1, 1964, the District of Columbia Credit Unions Act (47 Stat. 326), as amended, is repealed and all organization certificates issued thereunder and still in force are revoked. (Aug. 1, 1964, 78 Stat. 377, Pub. L. 88-395, § 4; 1973 Ed., § 26-522.)

Section references. — This section is referred to in §§ 26-603 and 26-809.1.

CHAPTER 7. MONEY LENDERS; LICENSES.

Sec.	Sec.
26-701. Businesses required to procure license and pay tax; appointment of resident agent; service of process or notice.	and receipts furnished borrower; amount of loans; violations.
26-702. Applications for license — Contents; grant; notice of filing; protest and hearing; power to reject.	26-706. Complaints; investigation; suspension, revocation, or denial of license.
26-703. Same — Bond; actions thereon; use of certified copy; renewal and refiling.	26-707. Violations.
26-704. Register to be kept; contents; inspection; annual statements.	26-708. Fees allowed on foreclosure.
26-705. Maximum rate of interest; fees and charges covered; deduction from principal prohibited; statement	26-709. Penalty provisions in contracts prohibited.
	26-710. Exemption of certain persons and businesses; service of process thereupon.
	26-711. Enforcement; rules and regulations.
	26-712. Exemption of certain loans; severability.

§ 26-701. Businesses required to procure license and pay tax; appointment of resident agent; service of process or notice.

It shall be unlawful and illegal to engage in the District of Columbia in the business of loaning money upon which a rate of interest greater than 6 % per annum is charged on any security of any kind, direct or collateral, tangible or intangible, without procuring license; and all persons, firms, voluntary associations, joint-stock companies, incorporated societies, and corporations engaged in said business shall pay a license tax of \$500 per annum to the District of Columbia. No license shall be granted to any person, firm, or voluntary association unless such person and the members of any such firm or voluntary association shall be bona fide residents of the District of Columbia, and no license shall be granted for a period longer than 1 year, and no license shall be granted to any joint-stock company, incorporated society, or corporation unless and until such company, society, or corporation shall, in writing and in due form, to be first approved by and filed with the Mayor of the District of Columbia, appoint an agent, resident in the District of Columbia, upon whom all judicial and other process or legal notice directed to such company, society, or corporation may be served. And in the case of death, removal from the District, or any legal disability or disqualification of any such agent, service of such process or notice may be made upon the Director of the Department of Licenses, Investigation and Inspections of the District of Columbia. (Feb. 4, 1913, 37 Stat. 657, ch. 26, § 1; Mar. 3, 1917, 39 Stat. 1006, ch. 160; 1973 Ed., § 26-601.)

Cross references. — As to business exempted from this chapter, see § 26-710.

As to rules and regulations governing money lenders, see § 26-711.

As to loans exempt from this chapter, see § 26-712.

As to applicability of this chapter to transac-

tions under Article 9, Subtitle I, Title 28, see § 28:9-203.

As to definition of usury, see § 28-3303.

As to refund of fees when license is refused, see § 47-1318.

As to authority of Council to regulate, modify, or eliminate license requirements and promul-

gate regulations, see §§ 47-2842 and 47-2844.

Section references. — This section is referred to in §§ 26-809.1 and 28-3303.

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

Transfer of functions. — All functions of the Superintendent of Licenses were transferred to the Director of the Department of Economic Development by Commissioner's Order No. 69-96, dated March 7, 1969. The Department of Economic Development was replaced by the Department of Licenses, Investigation and Inspection by Mayor's Order No. 78-42, dated February 17, 1978.

The functions of the Department of Licenses, Investigations, and Inspections were transferred to the Department of Consumer and Regulatory Affairs by Reorganization Plan No. 1 of 1983, effective March 31, 1983.

This chapter is a licensing statute, unrelated to and unaffected by usury statutes. *Indian Lake Estates, Inc. v. Ten Individual Defendants*, 350 F.2d 435 (D.C. Cir. 1965), cert. denied, 383 U.S. 947, 86 S. Ct. 1199, 16 L. Ed. 2d 209 (1966).

This chapter is not a usury statute, but an act licensing, under limitations and restrictions, the lending of money in small sums on personal security. *Knott v. Jackson*, App. D.C., 31 A.2d 662 (1942).

Applicability of chapter. — Although this chapter was primarily intended to regulate and limit the business of making small loans for security, this chapter does have application to loans in excess of \$200. In *re Parkwood, Inc.*, 461 F.2d 158 (D.C. Cir. 1971).

This chapter has application to a loan larger than \$200. *Hartman v. Lubar*, 133 F.2d 44 (D.C. Cir. 1942), cert. denied, 319 U.S. 767, 63 S. Ct. 1329, 87 L. Ed. 1716 (1943).

This chapter was intended to apply only to persons making small loans upon personal se-

curity. *Von Rosen v. Dean*, 41 F.2d 982 (D.C. Cir. 1930).

Where loans were negotiated in the District of Columbia by business firms headquartered and regularly doing loan business both in and out of the District and such loans were specifically repayable in the District, this chapter was applicable to the transactions. In *re Parkwood, Inc.*, 461 F.2d 158 (D.C. Cir. 1971).

"Business of loaning money." — Evidence that the lender had made 5 loans was not sufficient to warrant a finding that the lender was engaged in the "business of loaning money" within this chapter. *Knott v. Jackson*, App. D.C., 31 A.2d 662 (1942).

A nonresident, who makes occasional loans on real estate in the District, is not engaged "in the business" of loaning money within the meaning of this chapter. *Zirkle v. Daly*, 54 F.2d 455 (D.C. Cir. 1931).

Loan transaction disguised as sale. — A transaction which is a sale in form is to be treated as a loan when this more accurately reflects the substance of the arrangement. *Browner v. District of Columbia*, App. D.C., 549 A.2d 1107 (1988).

Depiction of transactions as a sale and lease back was a transparent sham which masked an unlawful unlicensed loan. *Browner v. District of Columbia*, App. D.C., 549 A.2d 1107 (1988).

Loan of nearly \$700 was not a "small loan" within this chapter. *Knott v. Jackson*, App. D.C., 31 A.2d 662 (1942).

Contract made in violation of this chapter should be unenforceable. *Hartman v. Lubar*, 133 F.2d 44 (D.C. Cir. 1942), cert. denied, 319 U.S. 767, 63 S. Ct. 1329, 87 L. Ed. 1716 (1943).

Chapter protects borrower. — A borrower is a member of the class for whose protection this chapter was enacted. *Royall v. Yudelevit*, 268 F.2d 577 (D.C. Cir. 1959).

Only the act of the lender and not the borrower may be illegal under this section. *Shulman v. Ritzenberg*, 47 F.R.D. 202 (D.D.C. 1969).

Rights of borrower under usurious loan contract. — The borrower under a usurious loan contract made in violation of this chapter had the right to elect whether to go into equity and ask that a foreclosure sale, caused by the transferee of a void note and a deed of trust, be set aside, or to let the sale stand and ask for damages. *Royall v. Yudelevit*, 268 F.2d 577 (D.C. Cir. 1959).

A borrower who enters into a usurious contract, void because the lender violated this chapter for not having a license, may recover from the lender any damages sustained by reason of such void contract. *Royall v. Yudelevit*, 268 F.2d 577 (D.C. Cir. 1959).

A borrowing corporation, which entered into

an allegedly usurious loan contract, illegal in that the lender failed to comply with the licensing requirement, could recover damages sustained because of an illegal contract unless the lender could establish an adequate affirmative defense. *Indian Lake Estates, Inc. v. Ten Individual Defendants*, 350 F.2d 435 (D.C. Cir. 1965), cert. denied, 383 U.S. 947, 86 S. Ct. 1199, 16 L. Ed. 2d 209 (1966).

A borrower was not entitled to recover a portion of a commission retained by a loan broker for arranging a loan on ground that the transaction was usurious in the absence of showing that the broker was acting solely as an agent of the lender. *Oliver v. United Mtg. Co.*, App. D.C., 230 A.2d 722 (1967).

Liability of unlicensed lender. — A lender in a loan contract which is merely usurious may not be liable in damages, but if there is added the fact that the lender was not licensed as required by law, the loan contract is unlawful and void, and a foreclosure thereunder is wrongful and gives rise to an action for damages suffered as a result of the foreclosure. *Royall v. Yudelevit*, 268 F.2d 577 (D.C. Cir. 1959).

Denial of request for jury trial upheld. — Denial of defendants' request for jury trial in prosecution for violation of licensing requirement did not deny defendants any constitutional or statutory right. *Browner v. District of Columbia*, App. D.C., 549 A.2d 1107 (1988).

Burden of proof in allegation of usury. — One who alleges usury or any contractual illegality has the burden of proving it and it was incumbent on the District to adduce evidence establishing an excessive finance payment and the fact that the plaintiff bank did not prove the amount of insurance premium did not relieve the District of its burden of proof. *District of Columbia v. Hamilton Nat'l Bank*, App. D.C., 76 A.2d 60 (1950).

Availability of defense of violation of chapter. — The defense of violation of this chapter can be used only against those unlicensed, nonexempt lenders who actually contract for, or receive, interest in excess of 6%.

American Sec. & Trust Co. v. Equitable Life Ins. Co., 461 F.2d 158 (D.C. Cir. 1971).

The defense that a contract violates this chapter is available, not only against the nominal maker of the loan, but against the principal for whom he acts and against the holder of an instrument given to secure payment of the loan, if the holder knew of its illegality. *Hartman v. Lubar*, 133 F.2d 44 (D.C. Cir. 1942), cert. denied, 319 U.S. 767, 63 S. Ct. 1329, 87 L. Ed. 1716 (1943).

Commission not usurious. — A commission paid by a borrower to a loan broker for obtaining a loan from a third person does not constitute usury. *Oliver v. United Mtg. Co.*, App. D.C., 230 A.2d 722 (1967).

Charge violated section. — Where no legal insurance was obtained on an automobile by a lending agency when the contract was executed under which a charge was exacted which made the total more than 6% annually on the amount loaned, even though part of the charge was called an "insurance premium", the charge was for "interest", and the lending agency violated this section. *Columbia Auto Loan, Inc. v. District of Columbia*, App. D.C., 78 A.2d 857, aff'd, 193 F.2d 34 (D.C. Cir. 1951), cert. denied, 342 U.S. 942, 72 S. Ct. 553, 96 L. Ed. 700 (1954).

Pawnbroker violates chapter if he stores pledged goods in the City of Washington, and uses it as a collecting center, but the applications for loans are made in Virginia, where free automobile service is maintained, and the loans are there made at an excessive rate. *Horning v. District of Columbia*, 254 U.S. 135, 41 S. Ct. 53, 65 L. Ed. 185 (1920), overruled on other grounds, *United States v. Gaudin*, — U.S. —, 115 S. Ct. 2310, 132 L. Ed. 2d 444 (1995).

Cited in *Brooks v. Auto Wholesalers, Inc.*, App. D.C., 101 A.2d 255 (1953); *Indian Lake Estates, Inc. v. Lichtman*, 311 F.2d 776 (D.C. Cir. 1962); *Murray Co. v. National Mtg. Corp.*, App. D.C., 299 A.2d 147 (1973); *Hartford Life Ins. Co. v. Title Guarantee Co.*, 520 F.2d 1170 (D.C. Cir. 1975); *United States v. Lima*, App. D.C., 424 A.2d 113 (1980).

§ 26-702. Applications for license — Contents; grant; notice of filing; protest and hearing; power to reject.

Applications for license to conduct such business must be made in writing to the Mayor of the District of Columbia, and shall contain the full names and addresses of applicants, if natural persons, and in the case of firms and voluntary associations, the full names and addresses of all the members thereof, and in the case of joint-stock companies, incorporated societies, and corporations, the full names and addresses of the officers and directors thereof and under what law or laws organized or incorporated, and the place where

such business is to be conducted, and such other information as the said Mayor may require. Every license granted shall date from the 1st of the month in which it is issued and expire on the 31st day of the following October, and such license shall be kept conspicuously displayed in the place of business of the licensee. Every application shall be filed not less than 30 days prior to the granting of such license, and notice of the filing of such application shall be posted in the office of the Director of the Department of Licenses, Investigation and Inspections of the said District and be published twice a week for 3 successive weeks in a daily newspaper published in the District of Columbia. Protest may be made by any person to the issuing of such license, and when such protests are filed with the said Mayor the latter shall give public notice of and hold a public hearing upon such protests before issuing such license. The said Mayor shall have the power to reject any application for license after a hearing upon such protest or for failure on the part of the applicant to observe this chapter, or when such applicant shall have violated its provisions. (Feb. 4, 1913, 37 Stat. 657, ch. 26, § 2; Mar. 3, 1917, 39 Stat. 1006, ch. 160; 1973 Ed., § 26-602.)

Section references. — This section is referred to in §§ 26-809.1 and 28-3303.

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Government Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of

Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

Transfer of functions. — All functions of the Superintendent of Licenses were transferred to the Director of the Department of Economic Development by Commissioner's Order No. 69-96, dated March 7, 1969. The Department of Economic Development was replaced by the Department of Licenses, Investigation and Inspection by Mayor's Order No. 78-42, dated February 17, 1978.

§ 26-703. Same — Bond; actions thereon; use of certified copy; renewal and refiling.

Each application shall be accompanied by a bond to the District of Columbia in the penal sum of \$5,000, with 2 or more sufficient sureties, and conditioned that the obligor will not violate any law relating to such business. The execution of any such bond by a fidelity or surety company authorized by the laws of the United States to transact business therein shall be equivalent to the execution thereof by 2 sureties, and such company, if excepted to, shall justify in the manner required by law of fidelity and surety companies. If any person shall be aggrieved by the misconduct of any such licensed person, firm, voluntary association, joint-stock company, incorporated society, or corporation, or by his, their, or its violation of any law relating to such business, and shall recover a judgment therefor, such person or his personal representative or heirs or distributees may, after a return unsatisfied either in whole or in part of any execution issued upon such judgment, maintain an action in his

own name upon such bond herein required in any court having jurisdiction of the amount claimed. The Mayor of the District of Columbia shall furnish to anyone applying therefor a certified copy of any such bond filed with him, upon the payment of a fee of \$.25, and such certified copy shall be prima facie evidence in any court that such bond was duly executed and delivered by the person, firm, voluntary association, joint-stock company, incorporated society, or corporation whose names appear thereon. Said bond shall be renewed and refiled annually in October of each year, or the licensed person, firm, voluntary association, joint-stock company, incorporated society, or corporation shall within 30 days thereafter, cease doing business, and their license shall be revoked by the said Mayor, but said bond until renewed and refiled as aforesaid shall be and remain in full force and effect. (Feb. 4, 1913, 37 Stat. 658, ch. 26, § 3; 1973 Ed., § 26-603.)

Section references. — This section is referred in §§ 26-809.1 and 28-3303.

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner.

The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

§ 26-704. Register to be kept; contents; inspection; annual statements.

Every person, firm, voluntary association, joint-stock company, incorporated society, or corporation conducting such business shall keep a register, approved by said Mayor, showing in English, the amount of money loaned, the date when loaned and when due, the person to whom loaned, the property or thing named as security for the loan, where the same is located and in whose possession, the amount of interest, all fees, commissions, charges, and renewals charged, under whatever name. Such register shall be open for inspection to the said Mayor, his officers and agents, on every day, except Sundays and legal holidays, between the hours of 9:00 in the forenoon and 5:00 in the afternoon. Every such person, firm, voluntary association, joint-stock company, incorporated society, or corporation conducting such business shall, on or before the 20th day of January of each year, make to the said Mayor an annual statement in the form of a trial balance of its books on the 31st day of December in each year, specifying the different kinds of its liabilities and the different kinds of its assets, stating the amount of each, together with such other information as may be called for. (Feb. 4, 1913, 37 Stat. 658, ch. 26, § 4; 1973 Ed., § 26-604.)

Section references. — This section is referred to in §§ 26-809.1 and 28-3303.

Change in government. — This section originated at a time when local government

powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmen-

tal Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of

Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

§ 26-705. Maximum rate of interest; fees and charges covered; deduction from principal prohibited; statement and receipts furnished borrower; amount of loans; violations.

No such person, firm, voluntary association, joint-stock company, incorporated society, or corporation shall charge or receive a greater rate of interest upon any loan made by him or it that exceeds the lawful rate in the District of Columbia set by Chapter 33 of Title 28 on the actual amount of the loan, and this charge shall cover all fees, expenses, demands, and services of every character, including notarial and recording fees and charges, except upon the foreclosure of the security. The foregoing interest shall not be deducted from the principal of loan when same is made. Every such person, firm, voluntary association, joint-stock company, incorporated society, or corporation conducting such business shall furnish the borrower a written, typewritten, or printed statement at the time the loan is made, showing, in English, in clear and distinct terms, the amount of the loan, the date when loaned and when due, the person to whom the loan is made, the name of the lender, the amount of interest charged, and the lender shall give the borrower a plain and complete receipt for all payments made on account of the loan at the time such payments are made. No such loan greater than \$200 shall be made to any 1 person; provided, that any person contracting, directly or indirectly, for, or receiving a greater rate of interest than that fixed in this chapter, shall forfeit all interest so contracted for or received; and in addition thereto shall forfeit to the borrower a sum of money, to be deducted from the amount due for principal, equal to one-fourth of the principal sum: And provided further, that any person in the employ of the government who shall loan money in violation of the provisions of this chapter shall forfeit his office or position, and be removed from the same. (Feb. 4, 1913, 37 Stat. 659, ch. 26, § 5; 1973 Ed., § 26-605; Feb. 24, 1987, D.C. Law 6-188, § 2(a), 33 DCR 7687.)

Section references. — This section is referred to in §§ 26-809.1 and 28-3303.

Legislative history of Law 6-188. — Law 6-188, the “Money Lenders Licensing Amendment Act of 1986,” was introduced in Council and assigned Bill No. 6-203, which was referred to the Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and second readings on November 5, 1986 and November 18, 1986, respectively. Signed by the Mayor on November 25, 1986, it was assigned

Act No. 6-239 and transmitted to both Houses of Congress for its review.

Application of section. — Although this section was primarily intended to regulate and limit the business of making small loans for security, this section does have application to loans in excess of \$200. *American Sec. & Trust Co. v. Equitable Life Ins. Co.*, 461 F.2d 158 (D.C. Cir. 1971).

Commission not usurious. — A commission paid by a borrower to a loan broker for

obtaining a loan from a third person does not constitute usury. *Oliver v. United Mtg. Co.*, App. D.C., 230 A.2d 722 (1967).

Defense of illegality held sufficient. — In replevin action by the trustee of an indorsee finance company to recover chattels named in the trust deed securing a note, evidence that

the loan was usurious, in that an amount in excess of the legal rate was deducted in advance and that the plaintiff knew the amount deducted in advance, was sufficient to make defense of illegality available to defendant. *Hartman v. Lubar*, App. D.C., 49 A.2d 553 (1946).

§ 26-706. Complaints; investigation; suspension, revocation, or denial of license.

Any complaint against a licensee or applicant shall be made in writing to the Mayor and the Mayor, on the basis of a written complaint or his or her initiative, may conduct an investigation. Pursuant to the investigation, the Mayor may suspend, revoke, or deny a license to any applicant or licensee who violates the provisions of this chapter. Before suspending, revoking, or denying a license, the Mayor shall notify the applicant or licensee of his or her right to a hearing pursuant to § 1-1509. (Feb. 4, 1913, 37 Stat. 659, ch. 26, § 6; 1973 Ed., § 26-606; Feb. 24, 1987, D.C. Law 6-188, § 2(b), 33 DCR 7687.)

Cross references. — As to administrative procedure, see §§ 1-1501 to 1-1510.

As to judicial review of administrative decisions, see §§ 1-1510 and 11-722.

As to refund of fees when license is refused, see § 47-1318.

Section references. — This section is referred to in §§ 26-809.1 and 28-3303.

Legislative history of Law 6-188. — See note to § 26-705.

§ 26-707. Violations.

(a) A person violating any provision of this chapter shall, upon conviction, be fined \$300, imprisoned for not less than 30 days or more than 90 days, or both. In addition, the court may order any person violating this chapter to make restitution for the value of property illegally obtained as a result of the violation. Prosecutions for violations of this chapter or any rules issued pursuant to this chapter shall be conducted in the Superior Court of the District of Columbia by the Corporation Counsel or any of his or her assistants in the name of the District of Columbia.

(b) Civil fines, penalties, and fees may be imposed as alternative sanctions for any infraction of the provisions of this chapter, or any rules or regulations issued under the authority of this chapter, pursuant to Chapter 27 of Title 6. Adjudication of any infraction of this chapter shall be pursuant to Chapter 27 of Title 6. (Feb. 4, 1913, 37 Stat. 659, ch. 26, § 7; 1973 Ed., § 26-607; Oct. 5, 1985, D.C. Law 6-42, § 466, 32 DCR 4450; Feb. 24, 1987, D.C. Law 6-188, § 2(c), 33 DCR 7687; Mar. 8, 1991, D.C. Law 8-237, § 5, 38 DCR 314.)

Section references. — This section is referred to in §§ 26-809.1 and 28-3303.

Legislative history of Law 6-42. — Law 6-42, the "Department of Consumer and Regulatory Affairs Civil Infractions Act of 1985," was introduced in Council and assigned Bill No. 6-187, which was referred to the Committee on Consumer and Regulatory Affairs. The Bill was

adopted on first and second readings on June 25, 1985, and July 9, 1985, respectively. Signed by the Mayor on July 16, 1985, it was assigned Act No. 6-60 and transmitted to both Houses of Congress for its review.

Legislative history of Law 6-188. — See note to § 26-705.

Legislative history of Law 8-237. — Law

8-237, the “Department of Consumer and Regulatory Affairs Civil Infractions Act of 1985 Technical and Clarifying Amendments Act of 1990,” was introduced in Council and assigned Bill No. 8-203, which was referred to the Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and second readings on December 4, 1990, and December 18, 1990, respectively. Signed by the Mayor on December 27, 1990, it was assigned Act No. 8-320 and transmitted to both Houses of Congress for its review.

Application of Law 6-42. — Section 501(b) of D.C. Law 6-42 provided that the provisions of the act shall apply only to infractions which occur or are discovered by inspection after October 5, 1985.

Denial of request for jury trial upheld. — Denial of defendants’ request for jury trial in prosecution for violation of licensing requirement of D.C. Code § 26-701 did not deny defendants any constitutional or statutory right. *Browner v. District of Columbia*, App. D.C., 549 A.2d 1107 (1988).

§ 26-708. Fees allowed on foreclosure.

In any foreclosure on any loan made under this chapter no charges for attorneys’ or agents’ fees shall be made or collected which will exceed 10% of the amount found due in such foreclosure proceedings. (Feb. 4, 1913, 37 Stat. 660, ch. 26, § 8; 1973 Ed., § 26-608.)

Section references. — This section is referred to in §§ 26-809.1 and 28-3303.

Cited in *Singer v. Shannon & Luchs Co.*, 670

F. Supp. 1024 (D.D.C. 1987), cert. denied, 493 U.S. 822, 110 S. Ct. 81, 107 L. Ed. 2d 46 (1989).

§ 26-709. Penalty provisions in contracts prohibited.

In any contract made in pursuance of the provisions of this chapter it shall be unlawful to incorporate any provision for liquidated or other damages as a penalty for any default or forfeiture thereunder. (Feb. 4, 1913, 37 Stat. 660, ch. 26, § 9; 1973 Ed., § 26-609.)

Section references. — This section is referred to in §§ 26-809.1 and 28-3303.

§ 26-710. Exemption of certain persons and businesses; service of process thereupon.

(a) Nothing contained in this chapter shall be held to apply to the legitimate business of national banks, licensed bankers, trust companies, savings banks, building and loan associations, small business investment companies licensed and operating under the Small Business Investment Act of 1958, or to life insurance companies. As used in this section the term “life insurance companies” means and includes any life insurance company authorized to do business in the District of Columbia pursuant to Chapters 3 to 8 of Title 35 and any other life insurance company which has a valid, current license to do business as such in any state of the United States.

(b) Any person or any legal entity exempted from the provisions of this Act by such subsection (a) of this section making loans secured on real or personal property in the District of Columbia who or which does not maintain an office for doing business in the District of Columbia or a residence in said District where such person or legal entity may be served with process in any suit arising out of any such transaction or in connection with such property shall appoint and maintain at all times in the District of Columbia a resident agent

upon whom process may be served in any such suit, and shall register with the Mayor of the District of Columbia or with his designee the name and address of such resident agent. Any such person or legal entity which fails to appoint and maintain at all times in the District of Columbia such resident agent shall not, while such failure continues, be entitled to the exemption provided in this section. Whenever any such person or entity does not have in the District of Columbia an agent for service of process or such agent cannot with reasonable diligence be found at his registered address, then the said Mayor or his designee shall be the agent for the service of process for such person or entity. Service of process on the Mayor or his designee shall be made by delivering to, and leaving with him, or with any person having charge of his office, or with his designee, duplicate copies of the process accompanied by a fee in the amount of \$2 and such service shall be sufficient service upon such person or entity. In the event of such service, the Mayor, or his designee, shall immediately cause one of such copies to be forwarded by registered or certified mail, addressed to such person or entity at his or its address, as such address appears on the records of the Mayor or his designee. Any such service shall be returnable in not less than 30 days unless the rules of the court issuing such process prescribe another period, in which case such prescribed period shall govern. Nothing contained in this section shall limit or affect the right to serve any process, notice, or demand required or permitted by law to be served on any such person or entity in any other manner now or hereafter permitted by law. (Feb. 4, 1913, 37 Stat. 660, ch. 26, § 10; June 11, 1960, 74 Stat. 196, Pub. L. 86-502, § 7; Dec. 5, 1963, 77 Stat. 344, Pub. L. 88-191, § 1; 1973 Ed., § 26-610; Feb. 24, 1987, D.C. Law 6-188, § 2(d), 33 DCR 7687.)

Cross references. — As to exemption of cooperative associations from this chapter, see § 29-1143.

Section references. — This section is referred to in §§ 26-809.1 and 28-3303.

Temporary amendment of section. — Section 2 of D.C. Law 11-97 added a new (c) and (d) to read as follows:

(c) For the purposes of this section, the term:

(1) “Community Development Corporation” or “CDC” means any community development corporation recognized by, and under contract with, the District of Columbia Department of Housing and Community Development (or any successor agency) that is engaged in business and economic development activities in the form of making microloans through the use of funds loaned to them by nationally or locally chartered banks or financial institutions for the specific purpose of microlending, and which organization is organized under § 29-501 *et seq.*, and whose articles of incorporation and bylaws are consistent with rules and regulations issued by the Mayor of the District of Columbia pursuant to § 1-2211 *et seq.*

(2) “Microloans” or “microlending” means a CDC engaging in the practice of making or issuing any loans up to, and including, \$25,000

to any person engaged in business within the District of Columbia.

(3) “Person” means any natural person, partnership, limited partnership, or corporation, including corporations taxed under Subchapter S of the Internal Revenue Code.

(d) No money lender licensing fee and bonding requirements contained in this Chapter shall be held to apply to a CDC engaged in microlending where the funds used for the microlending program were loaned to the CDC by a nationally or locally chartered bank or financial institution for the specific purpose of microlending, provided that the CDC operates and makes loans only in the geographical service area defined in their agreements with the District of Columbia Department of Housing and Community Development.”

Section 4(b) of D.C. Law 11-97 provided that the act shall expire after the 225th day of its having taken effect or on the effective date of the Community Development Corporations Money Lender License Exemption Amendment Act of 1995, whichever occurs first.

Subchapter S of the Internal Revenue Code, referred to in (c)(3), is codified as 26 U.S.C. § 1361 *et seq.*

Emergency act amendments. — For temporary amendment of section, see § 2 of the

Community Development Corporations Money Lender License Exemption Emergency Amendment Act of 1995 (D.C. Act 11-145, October 23, 1995, 42 DCR 6046) and § 2 of the Community Development Corporations Money Lender Licensing Fee and Bonding Exemption Legislative Review Emergency Amendment Act of 1996 (D.C. Act 11-184, January 23, 1996, 43 DCR 378).

Legislative history of Law 6-188. — See note to § 26-705.

Legislative history of Law 11-97. — Law 11-97, the “Community Development Corporations Money Lender Licensing Fee and Bonding Exemption Temporary Amendment Act of 1995,” was introduced in Council and assigned Bill No. 11-460. The Bill was adopted on first and second readings on October 10, 1995, and December 5, 1995, respectively. Signed by the Mayor on December 27, 1995, it was assigned Act No. 11-180 and transmitted to both Houses of Congress for its review. D.C. Law 11-97 became effective on March 5, 1996.

References in text. — The Small Business Investment Act of 1958, referred to in the first sentence of subsection (a) of this section, is the Act of August 21, 1958, 72 Stat. 689, Pub. L. 85-699 and is codified in various sections of Titles 12, 15, and 18 of the United States Code.

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of

the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

Loan excluded from real estate broker exemption. — A loan, which was made by a real estate broker-mortgage banker in exchange for a note of 6½% interest and a deed of trust on the real estate, did not fall within the real estate broker exemption of this chapter, notwithstanding the contention that an integral part of the real estate brokerage includes not only the negotiations of loans on behalf of other investors, but also the placing of loans on behalf of brokers themselves. *American Sec. & Trust Co. v. Equitable Life Ins. Co.*, 461 F.2d 158 (D.C. Cir. 1971).

Life insurance company exempt. — Where a life insurance company that made a loan to prior owners of a hotel for the purpose of providing funds for refinancing the hotel property and for refurbishing and renovating the hotel was licensed to do business in the District of Columbia under the Life Insurance Act, the company was exempt from the licensing requirements of this chapter. *National Life Ins. Co. v. Silverman*, 454 F.2d 899 (D.C. Cir. 1971).

§ 26-711. Enforcement; rules and regulations.

The enforcement of this chapter shall be intrusted to the Mayor of the District of Columbia, and the Council of the District of Columbia is hereby authorized and empowered to make all rules and regulations necessary in its judgment for the conduct of such business and the enforcement of this chapter in addition hereto and not inconsistent herewith. (Feb. 4, 1913, 37 Stat. 660, ch. 26, § 11; 1973 Ed., § 26-611.)

Cross references. — As to rules and regulations for the protection of life, health, and property, see § 1-319.

Section references. — This section is referred to in §§ 26-809.1 and 28-3303.

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 402(224)

of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to the District of Columbia Council, subject to the right of the Commissioner as provided in § 406 of the Plan. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced

by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to

§ 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

§ 26-712. Exemption of certain loans; severability.

(a) No provision of this chapter shall apply with respect to any loan, or to the making of any loan:

(1) To any corporation which is unable to plead any statutes against usury in any action;

(2) Repealed;

(3) Secured on real estate located outside of the District of Columbia;

(4) To a borrower residing, doing business, or incorporated outside of the District of Columbia; or

(5) Greater than \$25,000.

(b) If any provision of this section or the application thereof to any person or circumstance, is held invalid, the remainder of the section, and the application of such provision to other persons or circumstances shall not be affected thereby. (Feb. 4, 1913, ch. 26, § 14; Dec. 17, 1971, 85 Stat. 679, Pub. L. 92-200, § 9(a); 1973 Ed., § 26-612; Feb. 24, 1987, D.C. Law 6-188, § 2(e), (f), 33 DCR 7687.)

Section references. — This section is referred to in §§ 26-809.1 and 28-3303.

Legislative history of Law 6-188. — See note to § 26-705.

Cited in *Murray Co. v. National Mtg. Corp.*, App. D.C., 299 A.2d 147 (1973).

CHAPTER 8. REGIONAL INTERSTATE BANKING.

Sec.	Sec.
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26-802. Regional bank holding company acquisitions.	26-807.1. Insurance.
26-802.1. Establishment of Office of Banking and Financial Institutions; Superintendent; Council review of rules.	26-807.2. Penalties.
26-803. Exceptions.	26-808. [Repealed].
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26-805. Prohibited acts.	26-809.1. Applicability.
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26-806.1. Alternative entry by acquisition.	26-811. Administrative procedure; cease and desist orders.
	26-812. Hearings.
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§ 26-801. Definitions.

For the purpose of this chapter, the term:

(1) “Acquire” means:

(A) The merger or consolidation of 1 bank holding company with another bank holding company;

(B) The acquisition by a bank holding company of direct or indirect ownership or control of voting shares of another bank holding company or a bank, if, after the acquisition, the bank holding company making the acquisition will directly or indirectly own or control more than 5% of any class of voting shares of the other bank holding company or the bank;

(C) The direct or indirect acquisition by a bank holding company of all or substantially all of the assets of another bank holding company or of a bank; or

(D) Any other action that would result in direct or indirect control by a bank holding company of another bank holding company or bank.

(2) “Bank” means any “insured bank” as the term is defined in 12 U.S.C. § 1813(h), or any institution eligible to become an insured bank as the term is defined therein, which, in either event:

(A) Accepts deposits that the depositor has a legal right to withdraw on demand; and

(B) Engages in the business of making commercial loans.

(3) “Bank holding company” has the meaning set forth in 12 U.S.C. § 1841(a)(1).

(4) “Banking office” means any office or other location at which a bank accepts deposits. The term “banking office” shall not mean:

(A) Unmanned automatic teller machines, point of sale terminals, or other similar unmanned electronic banking facilities at which deposits may be accepted;

(B) Offices located outside the United States; or

(C) Loan production offices, representative offices, or other offices at which deposits are not accepted.

(5) “Control” has the meaning set forth in 12 U.S.C. § 1841(a)(2).

(6) “Deposits” means all demand, time, and savings deposits, without regard to the location of the depositor. The term “deposits” shall not include

any deposits by banks. For purposes of this chapter, determination of deposits shall be made with reference to regulatory reports of conditions or similar reports made by or to state and federal regulatory authorities.

(7) "District" means the District of Columbia.

(8) "District bank" or "District of Columbia bank" means a bank that:

(A) Is organized under the laws of the United States or a state; and

(B) Has banking offices located only in the District.

(9)(A) "District bank holding company" or "District of Columbia bank holding company" means a bank holding company:

(i) That has its principal place of business in the District of Columbia;

(ii) The District of Columbia bank and regional bank subsidiaries of which hold more than 80% of the total deposits held by all of its bank subsidiaries, other than bank subsidiaries controlled by it in accordance with § 26-803; and

(iii) That is not controlled by a bank holding company other than a District bank holding company.

(B) For purposes of determining whether a bank holding company that had a District bank subsidiary on January 1, 1985, is and continues to be a District bank holding company, no consideration shall be given to the deposits of any bank subsidiary located outside the region that the bank holding company controlled on January 1, 1985.

(10) "Low- and moderate-income area" means any area within the District which the Superintendent designates in rules as a low- and moderate-income area after the Superintendent's consideration of the income levels of residents within the area, the mix of the levels of income in the area, and the location of the levels of income within the area. The Superintendent shall from time to time revise the Superintendent's designations to reflect changes in these factors. Once an area has been determined to be a low- and moderate-income area and identified by an applicant in any application which is considered approved pursuant to § 26-804, that determination is final for the applicant, and any future revision in the determination of low- and moderate-income areas shall have no effect on the applicant.

(11) "Nonregional bank holding company" means any bank holding company which is neither a District bank holding company nor a regional bank holding company.

(11A) "Person" means an individual, corporation, trust, joint venture, company, association, firm, partnership, society, joint stock company, pool syndicate, sole proprietorship, unincorporated organization, fiduciary business, or any other entity not specifically listed in this chapter.

(12) "Principal place of business" of a bank holding company means the state in which the total deposits held by the banking offices of the bank holding company's bank subsidiaries are the largest.

(13) "Region" means the District of Columbia and the states of Alabama, Florida, Georgia, Louisiana, Maryland, Mississippi, North Carolina, South Carolina, Tennessee, Virginia, and West Virginia.

(14) "Regional bank" means a bank that:

(A) Is organized under the laws of the United States or of 1 of the states in the region other than the District of Columbia; and

(B) Has banking offices located only in states within the region.

(15)(A) “Regional bank holding company” means a bank holding company:

(i) That has its principal place of business in a state within the region other than the District of Columbia;

(ii) The regional bank and District of Columbia bank subsidiaries of which hold more than 80% of the total deposits held by all of its bank subsidiaries, other than bank subsidiaries controlled by it in accordance with § 26-803; and

(iii) That is not controlled by a bank holding company other than a regional bank holding company.

(B) For purposes of determining whether a bank holding company that had a District of Columbia bank subsidiary on January 1, 1985, is and continues to be a regional bank holding company, no consideration shall be given to the deposits of any bank subsidiary located outside the region that the bank holding company controlled on January 1, 1985.

(16) “Small business” means a business with annual gross sales of \$5 million or less.

(17) “State” means any state of the United States or the District of Columbia.

(18) “Subsidiary” has the meaning set forth in 12 U.S.C. § 1841(d).

(19) “Superintendent” means the Superintendent of Banking and Financial Institutions.

(20) “Target banking development area” means any low- and moderate-income area or any area which the Superintendent determines in rules is an underserved area. In determining whether an area is underserved, the Superintendent shall consult with the Council of the District of Columbia (“Council”) and the District of Columbia Office of Business and Economic Development and shall consider the availability of deposit, loan, and credit services within the area to satisfy consumer and small business needs or the availability and need of other banking services within the area. Once an area has been determined to be a target banking development area and identified by an applicant in any application which is considered approved pursuant to § 26-804, that determination is final for the applicant, and any future revision in the determination of target banking development areas shall have no effect on the applicant.

(21) “Target economic development project” means any commercial, industrial, residential real estate, business, or other economic development activity which the Superintendent decides in rules will benefit residents in low- and moderate-income areas or small businesses in low- and moderate-income areas. In reaching his or her decision, the Superintendent shall consult with the Council and the District of Columbia Office of Business and Economic Development, shall consider the policies set forth in the 1984 Comprehensive Plan for the National Capital, and subsequent amendments, and shall give special emphasis to economic development project activity in economically distressed areas which have been historically underinvested. Once a project has been determined to be a target economic development project and identified by an applicant in any application which is considered approved

pursuant to § 26-804, that determination is final for the applicant, and any future revisions in the determination of a target economic development project shall have no effect on the applicant.

(22) “Women-owned” means that at least 51% of the bank is owned by a woman or women who make the policy decisions and actively manage day-to-day operations. (Nov. 23, 1985, D.C. Law 6-63, § 2, 32 DCR 5954; Apr. 11, 1986, D.C. Law 6-107, § 2(a), 33 DCR 1168; Apr. 30, 1988, D.C. Law 7-104, § 27(a), 35 DCR 147; Mar. 16, 1989, D.C. Law 7-187, § 2(a), 35 DCR 8648; Aug. 17, 1991, D.C. Law 9-42, § 2(a), 38 DCR 4981.)

Section references. — This section is referred to in §§ 47-343 and 47-344.

Legislative history of Law 6-63. — Law 6-63, the “District of Columbia Regional Interstate Banking Act of 1985,” was introduced in Council and assigned Bill No. 6-126, which was referred to the Committee on Housing and Economic Development. The Bill was adopted on first and second readings on June 25, 1985, and September 10, 1985, respectively. Disapproved by the Mayor and reenacted by Council on October 8, 1985, it was assigned Act No. 6-86 and transmitted to both Houses of Congress for its review.

Legislative history of Law 6-107. — Law 6-107, the “District of Columbia Regional Interstate Banking Act of 1985 Amendments Act of 1985,” was introduced in Council and assigned Bill No. 6-276, which was referred to the Committee on Housing and Economic Development. The Bill was adopted on first and second readings on January 14, 1986, and January 28, 1986, respectively. Signed by the Mayor on February 14, 1986, it was assigned Act No. 6-136 and transmitted to both Houses of Congress for its review.

Legislative history of Law 7-104. — Law 7-104, the “Technical Amendments Act of 1987,” was introduced in Council and assigned Bill No. 7-346, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on November 24, 1987, and December 8, 1987, respectively. Signed by the Mayor on December 22, 1987, it was assigned Act No. 7-124 and transmitted to both Houses of Congress for its review.

Legislative history of Law 7-187. — Law 7-187, the “District of Columbia Minority Bank Encouragement Amendment Act of 1988,” was introduced in Council and assigned Bill No. 7-471, which was referred to the Committee on Housing and Economic Development. The Bill was adopted on first and second readings on October 25, 1988, and November 15, 1988, respectively. Signed by the Mayor on December 1, 1988, it was assigned Act No. 7-249 and transmitted to both Houses of Congress for its review.

Legislative history of Law 9-42. — See note to § 26-811.

Transfer of functions. — Pursuant to Reorganization Plan No. 3 of 1992, effective January 20, 1993, unless another date was designated by the Mayor under sec. V of the Plan, the D.C. Office of Banking and Financial Institutions (“OBFI”) is hereby transferred from the Deputy Mayor for Economic Development (“DMED”) control center to a separate OBFI control center/responsibility center. OBFI will continue to be administered by the Superintendent and will remain a part of the economic development cluster reporting to the Mayor.

First Union Corporation D.C. Community Development Program Amendments Emergency Approval Resolution of 1993. — Pursuant to Resolution 10-65, effective June 21, 1993, the Council approved, on an emergency basis, community development enhancements to be effected by amendments to the Community Development Program included in the application for First Union Corporation’s acquisition of Dominion Bank.

§ 26-802. Regional bank holding company acquisitions.

(a) A regional bank holding company may acquire a District of Columbia bank holding company or a District of Columbia bank (other than a District of Columbia bank holding company or a District of Columbia bank which is acquired either pursuant to section 13 of the Federal Deposit Insurance Act (12 U.S.C. § 1823(f)), or in the regular course of securing or collecting a debt previously contracted in good faith, as provided in section 3(a) of the Bank Holding Company Act of 1956 (12 U.S.C. § 1842(a)), if each of the following requirements is met:

(1) The laws of the state in which the regional bank holding company making the acquisition has its principal place of business permit the regional bank holding company to be acquired by the District of Columbia bank holding company or the District of Columbia bank sought to be acquired.

(2) Either the District of Columbia bank sought to be acquired has been in existence and continuously operating for more than 2 years or all of the bank subsidiaries of the District of Columbia bank holding company sought to be acquired have been in existence and continuously operating for more than 2 years. A regional bank holding company may acquire all or substantially all of the shares of a bank organized solely for the purpose of facilitating the acquisition of a bank that has been in existence and continuously operating as a bank for more than 2 years.

(3) The acquisition complies with any conditions, restrictions, requirements, or other limitations that would apply to the acquisition by the District of Columbia bank holding company or the District of Columbia bank sought to be acquired of a bank or bank holding company located in the state where the regional bank holding company making the acquisition has its principal place of business, but that would not apply to the acquisition of a bank or bank holding company in the state by a bank holding company, all the bank subsidiaries of which are located in that state.

(b) For the purpose of subsection (a)(1) and (3) of this section, a District of Columbia bank shall be treated as if it were a District of Columbia bank holding company. (Nov. 23, 1985, D.C. Law 6-63, § 3, 32 DCR 5954; Mar. 27, 1993, D.C. Law 9-261, § 2, 40 DCR 1030; Sept. 30, 1993, D.C. Law 10-16, § 2, 40 DCR 5448; May 16, D.C. Law 10-255, § 20, 41 DCR 5193.)

Section references. — This section is referred to in § 26-804.

Effect of amendments. — D.C. Law 10-255 validated a previously made change in (b).

Temporary amendment of section. — Section 2(a) of D.C. Law 10-27 added a new (c) to read as follows:

“(c) A regional bank holding company that is authorized by subsection (a) of this section to acquire a District of Columbia bank or a District of Columbia bank holding company shall make the acquisition pursuant to the same laws and regulations that are applicable to acquisitions of District of Columbia banks or District of Columbia bank holding companies, as the case may be, by a District of Columbia bank holding company.”

Section 3(b) of D.C. Law 10-27 provided that the act shall expire on the 225th day of its having taken effect or upon the effective date of the District of Columbia Regional Interstate Banking Act of 1985 Clarification Act of 1993, whichever occurs first.

Legislative history of Law 6-63. — See note to § 26-801.

Legislative history of Law 9-261. — Law 9-261, the “Regional Interstate Banking Act of 1985 Temporary Amendment Act of 1992,” was

introduced in Council and assigned Bill No. 9-732. The Bill was adopted on first and second readings on December 15, 1992, and January 5, 1993, respectively. Signed by the Mayor on January 25, 1993, it was assigned Act No. 9-409 and transmitted to both Houses of Congress for its review. D.C. Law 9-261 became effective on March 27, 1993.

Legislative history of Law 10-16. — Law 10-16, the “Regional Interstate Banking Act of 1985 Amendment Act of 1993,” was introduced in Council and assigned Bill No. 10-64, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on June 1, 1993, and June 29, 1993, respectively. Signed by the Mayor on July 16, 1993, it was assigned Act No. 10-47 and transmitted to both Houses of Congress for its review. D.C. Law 10-16 became effective on September 30, 1993.

Legislative history of Law 10-27. — Law 10-27, the “D.C. Regional Interstate Banking Act of 1985 Clarification Temporary Amendment Act of 1993,” was introduced in Council and assigned Bill No. 10-304. The Bill was adopted on first and second readings on June 15, 1993, and July 29, 1993, respectively. Signed by the Mayor on July 20, 1993, it was

assigned Act No. 10-59 and transmitted to both Houses of Congress for its review. D.C. Law 10-27 became effective on October 5, 1993.

Legislative history of Law 10-255. — Law 10-255, the “Technical Amendments Act of 1994,” was introduced in Council and assigned Bill No. 10-673, which was referred to the

Committee of the Whole. The Bill was adopted on first and second readings on June 21, 1994, and July 5, 1994, respectively. Signed by the Mayor on July 25, 1994, it was assigned Act No. 10-302 and transmitted to both Houses of Congress for its review. D.C. Law 10-255 became effective May 16, 1995.

§ 26-802.1. Establishment of Office of Banking and Financial Institutions; Superintendent; Council review of rules.

(a)(1) The Office of Banking and Financial Institutions is established and shall be under the direction of the Superintendent of Banking and Financial Institutions.

(2) The Mayor shall appoint the Superintendent, with the advice and consent of the Council, for a term of 4 years, except that the first term of the Superintendent shall terminate on January 1, 1987.

(3) No person shall exercise the duties of the Superintendent in an acting capacity for more than 120 days.

(b) The Superintendent shall:

(1) Administer this chapter;

(2) Promote a climate in which financial institutions will organize to do business in the District and contribute to the economic development of the District through the increased availability of capital and credit;

(3) Expand advantageous financial services to the public in a nondiscriminatory manner;

(4) Charter and regulate banks, savings banks, savings companies, trust companies, or other financial institutions seeking to establish, in accordance with § 26-101, an office or banking house located within the District where deposits or savings are received;

(5) Regulate, to the extent provided in § 26-401, companies which are formed for the purpose of carrying on any 1 of the following 3 classes of business in the District:

(A) A safe deposit, trust, loan, and mortgage business;

(B) A title insurance, loan, and mortgage business; or

(C) A security, guarantee, indemnity, loan, and mortgage business;

(6) Charter and regulate building associations, building and loan associations, and savings and loan associations which are formed within the District for the purpose of carrying on the activities described in § 26-504;

(7) Regulate the branching or opening of additional offices by financial institutions under the supervision of the Superintendent;

(8) Regulate the institutions described in paragraphs (4), (5), and (6) of this subsection to the same extent that these financial institutions were regulated by the Office of the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, and the Federal Home Loan Bank Board prior to April 11, 1986, and in a manner that promotes safe and sound financial practices;

(9) Promote and maintain, to the extent possible, an economic climate and regulatory framework that will encourage financial institutions to organize to do business in the District of Columbia;

(10) Upon confirmation, administer, to the extent provided in this chapter, the provisions of this chapter concerning interstate banking;

(11) Assure that all financial institutions under the supervision or control of the Office of Banking and Financial Institutions and all banks and bank holding companies seeking entry into the District of Columbia under the interstate banking provisions in this chapter provide financial services to the public in a manner that fosters the development and revitalization of housing and commercial corridors in underserved neighborhoods in the District, helps meet the credit and deposit service needs of lower income and minority residents of the District, and expands financial and technical support for small, minority, and women-owned businesses;

(12) In all respects permitted by law, act as the District government's regulatory authority for financial institutions operating in the District;

(13) Establish fees not otherwise established by act, and, from time to time, increase the fees established by act;

(14) Issue rules necessary to carry out the purposes of this chapter;

(15) Receive and investigate complaints or initiate an investigation in regard to a possible violation of this chapter or § 26-103 ("Banking Business Act");

(16) If an investigation warrants, examine, which may include an audit, a person who may act as a bank to assure that the person acts in compliance with the law or examine, which may include an audit, a District of Columbia ("District") banking corporation chartered by the Superintendent and the banking corporation's affiliate or subsidiary to assure that the bank, affiliate, or subsidiary operates in compliance with the law and in a manner that preserves the safety and soundness of the bank, affiliate, or subsidiary;

(17) Inform any other District or federal agency with an interest that an investigation is ongoing;

(18) If an investigation warrants, hold a hearing, issue a subpoena to compel the attendance of a witness, administer an oath, and take the testimony of any person under oath in regard to any violation or possible violation of this chapter or § 26-103;

(19) If an investigation warrants, issue a subpoena to compel the production of any document, paper, book, record, or other evidence in regard to any violation or possible violation of this chapter or § 26-103;

(20) Issue a cease and desist order related to any violation or possible violation of this chapter or § 26-103 pursuant to § 26-811; and

(21) Pursue, through the Office of the Corporation Counsel, the obtaining of a restraining order, the appointment of a receiver, the involuntary dissolution of a corporation, or the freezing or seizure of assets of a corporation or person related to a violation or possible violation of this chapter or § 26-103 pursuant to § 26-811.

(b-1) The Superintendent shall, upon a finding of a violation of this chapter or § 26-103, refer the matter to the Corporation Counsel or United States Attorney for civil or criminal enforcement, as the case may warrant.

(c) All rules which the Superintendent issues pursuant to this chapter shall be transmitted to the Council for a 45-day review period, excluding Saturdays, Sundays, holidays, and days when Council is in recess. The Council may adopt a resolution disapproving the rules, in whole or in part, within the 45-day review period. If the Council, by resolution, does not approve or disapprove the rules before the expiration of the 45-day review period, the rules shall become effective at the expiration of the 45-day review period.

(d)(1) Until a Superintendent is appointed and confirmed pursuant to this section, all duties and responsibilities of the Superintendent concerning the chartering of new financial institutions under § 26-804(a) shall be performed by the Mayor, or his or her designee.

(2) During any period the Mayor, or his or her designee, is performing the duties and responsibilities of the Superintendent, the Mayor, or his or her designee, may enter into contracts with the Office of the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the Federal Home Loan Bank Board, or any other entities, for those services necessary to carry out the duties and responsibilities of the Superintendent. (Nov. 23, 1985, D.C. Law 6-63, § 3a, as added Apr. 11, 1986, D.C. Law 6-107, § 2(b), 33 DCR 1168; Aug. 17, 1991, D.C. Law 9-42, § 2(b), 38 DCR 4981; Feb. 5, 1994, D.C. Law 10-68, § 25(a), 40 DCR 6311.)

Section references. — This section is referred to in §§ 1-603.1 and 26-804.

Effect of amendments. — D.C. Law 10-68 made internal reference changes in (b)(15), (20), and (21).

Temporary amendment of section. — Section 2(a) of D.C. Law 8-260 added new subsections to read as follows:

“(b-1) The Superintendent shall:

“(1) Receive and investigate complaints or initiate an investigation in regard to a possible violation of this chapter or § 26-103;

“(2) If an investigation warrants, examine, which may include an audit, a person who may act as a bank to assure that the person acts in compliance with the law or examine, which may include an audit, a District of Columbia (‘District’) banking corporation chartered by the Superintendent and the banking corporation’s affiliate or subsidiary to assure that the bank, affiliate, or subsidiary operates in compliance with the law and in a manner that preserves the safety and soundness of the bank, affiliate, or subsidiary;

“(3) Inform any other District or federal agency with an interest that an investigation is ongoing;

“(4) If an investigation warrants, hold a hearing, issue a subpoena to compel the attendance of a witness, administer an oath, and take the testimony of any person under oath in regard to any violation or possible violation of this chapter or the Banking Business Act;

“(5) If an investigation warrants, issue a

subpoena to compel the production of any document, paper, book, record, or other evidence in regard to any violation or possible violation of this chapter or the Banking Business Act;

“(6) Issue a cease and desist order related to any violation or possible violation of this chapter or the Banking Business Act pursuant to § 26-811; and

“(7) Pursue, through the Office of the Corporation Counsel, the obtaining of a restraining order, the appointment of a receiver, the involuntary dissolution of a corporation, or the freezing or seizure of assets of a corporation or person related to a violation or possible violation of this chapter or the Banking Business Act pursuant to § 26-811.

“(b-2) The Superintendent shall, upon a finding of a violation of this chapter or the Banking Business Act, refer the matter to the Corporation Counsel or U.S. Attorney for civil or criminal enforcement, as the case may warrant.

“(b-3) For the purposes of the Interstate Banking Act of 1985 Amendment Temporary Act of 1990, the term ‘person’ shall mean an individual, corporation, trust, joint venture, company, association, firm, partnership, society, joint stock company, pool syndicate, sole proprietorship, unincorporated organization, fiduciary business, or any other entity not specifically listed in this subsection.”

Section 5(b) of D.C. Law 8-260 provided that the act shall expire on the 225th day of its having taken effect or upon the effective date of the District of Columbia Interstate Banking Act

of 1985 Amendment Act of 1991, whichever occurs first.

Legislative history of Law 6-107. — Law 6-107, the “District of Columbia Regional Interstate Banking Act of 1985 Amendments Act of 1985,” was introduced in Council and assigned Bill No. 6-276, which was referred to the Committee on Housing and Economic Development. The Bill was adopted on first and second readings on January 14, 1986 and January 28, 1986, respectively. Signed by the Mayor on February 14, 1986, it was assigned Act No. 6-136 and transmitted to both Houses of Congress for its review.

Legislative history of Law 8-260. — Law 8-260, the “District of Columbia Interstate Banking Act of 1985 Amendment Temporary Act of 1990,” was introduced in Council and assigned Bill No. 8-735. The Bill was adopted on first and second readings on December 18, 1990, and February 5, 1991, respectively. Signed by the Mayor on February 22, 1991, it was assigned Act No. 8-345 and transmitted to both Houses of Congress for its review.

Legislative history of Law 9-42. — See note to § 26-811.

Legislative history of Law 10-68. — Law 10-68, the “Technical Amendments Act of 1993,” was introduced in Council and assigned Bill No. 10-166, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on June 29, 1993, and July 13, 1993, respectively. Signed by the Mayor on August 23, 1993, it was assigned Act No. 10-107 and transmitted to both Houses of Congress for its review. D.C. Law 10-68 became effective on February 5, 1994.

References in text. — The “Federal Home Loan Bank Board”, referred to in subsections (b)(8) and (d)(2), has been abolished. For provisions relating to the abolition of the Federal Home Loan Bank Board and the transfer of functions, personnel and property of that agency, see §§ 401 to 406 of Pub.L. 101-73, set out as a note under 12 U.S.C. § 1437.

Approval and disapproval, in part, of proposed rules for the Office of Banking and Financial Institutions. — Pursuant to Resolution 7-145, the “Office of Banking and Financial Institutions Rules Approval and Disapproval Resolution of 1987,” effective October 13, 1987, the Council approved and disapproved, in part, the proposed rules for the Office of Banking and Financial Institutions which were submitted on June 12, 1987.

Pursuant to Resolution 7-310, the “Office of Banking and Financial Institutions Rules Approval and Disapproval Resolution of 1988”, effective July 12, 1988, the Council approved and disapproved, in part, the proposed rules for the Office of Banking and Financial Institutions submitted on June 8, 1988.

Transfer of functions. — Pursuant to Reorganization Plan No. 3 of 1992, effective January 20, 1993, unless another date was designated by the Mayor under sec. V of the Plan, the D.C. Office of Banking and Financial Institutions (“OBFI”) is hereby transferred from the Deputy Mayor for Economic Development (“DMED”) control center to a separate OBFI control center/responsibility center. OBFI will continue to be administered by the Superintendent and will remain a part of the economic development cluster reporting to the Mayor.

§ 26-803. Exceptions.

A District of Columbia bank holding company, a District of Columbia bank, a regional bank holding company, or a regional bank may acquire or control, and shall not cease to be a District of Columbia bank holding company, a District of Columbia bank, a regional bank holding company, or a regional bank, as the case may be, by virtue of its acquisition or control of:

(1) A bank having banking offices in a state not within the region, if the bank has been acquired pursuant to the provisions of 12 U.S.C. § 1730a(m) or 12 U.S.C. § 1823(f);

(2) A bank having banking offices in a state not within the region, if the bank has been acquired in the regular course of securing or collecting a debt previously contracted in good faith, as provided in 12 U.S.C. § 1842(a), and if the bank or bank holding company divests the securities or assets acquired within 2 years of the date of acquisition; or

(3) A bank or corporation organized under the laws of the United States or of any state and operating under 12 U.S.C. § 601 or 12 U.S.C. §§ 611-633, or a bank or bank holding company organized under the laws of a foreign country that is principally engaged in business outside the United States and that

either has no banking office in the United States or has banking offices in the United States that are engaged only in business activities permissible for a corporation operating under 12 U.S.C. § 601 or §§ 611-632. (Nov. 23, 1985, D.C. Law 6-63, § 4, 32 DCR 5954; Feb. 5, 1994, D.C. Law 10-68, § 25(b), 40 DCR 6311.)

Section references. — This section is referred to in § 26-801.

Effect of amendments. — D.C. Law 10-68 substituted “§§ 611-632” for “§§ 611-31” in (3).

Legislative history of Law 6-63. — See note to § 26-801.

Legislative history of Law 10-68. — See note to § 26-802.1.

References in text. — “12 U.S.C. § 1730a,” referred to in (1), was repealed by Pub. L. 101-73, Title IV, § 407, August 9, 1989, 103 Stat. 363.

§ 26-804. Review of applications.

(a) Any person who conducts or seeks to conduct a class of business described in § 26-802.1(b)(4), (5), or (6) in the District shall file an application with the Superintendent for approval to do business in the District, unless the person is already chartered by the appropriate federal or District agency or organized by virtue of the laws of any of the states of this Union and doing business pursuant to § 26-103(a)(1). Consistent with applicable federal law, all the applications, including any supporting documents, and any other information required to be submitted to the Superintendent shall be made available to the public. An application filed with the appropriate federal agency for approval to conduct a class of business described in § 26-802.1(b)(4), (5), or (6) and still pending approval or approved prior to April 11, 1986, shall not be subject to this section or the provisions of this chapter. The Council shall file comments regarding the applications pending April 11, 1986. Any Council comments regarding a pending application filed prior to April 11, 1986, shall meet the requirements of the preceding sentence.

(b) Upon the filing of a complete application pursuant to subsection (a) of this section, the following procedures shall apply:

(1)(A) The Superintendent shall prepare a periodic bulletin listing all pending applications. The bulletin shall be published in the District of Columbia Register and shall be mailed without charge to any person upon request.

(B) Prior to deciding whether to grant approval of the application, the Superintendent shall accept public comment on the application and shall hold a public hearing on the application, according to procedures established by the rules issued by the Superintendent.

(2) The Superintendent shall make either a favorable or unfavorable recommendation on the application and explain the reasons for the Superintendent’s recommendation, and shall transmit to the Council the Superintendent’s recommendation, a copy of the application, and any other relevant information or submissions within 90 days after receipt of the application. The Superintendent may extend this 90-day period for up to an additional 60 days. No application required by this section shall be complete unless it is accompanied by an application fee in an amount to be established by the Superintendent and made payable to the D.C. Treasurer. No entity for which insurance

is required shall commence operations until the applicant has submitted evidence that the insurance has been acquired.

(3) The Council may adopt a resolution disapproving the Superintendent's recommendation within 45 days, excluding Saturdays, Sundays, holidays, and days when the Council is in recess, after receipt of the Superintendent's recommendation.

(4) If the Council fails to adopt a resolution disapproving the Superintendent's recommendation within the 45-day period, the Superintendent's recommendation shall be considered approved.

(5) If the Council adopts a resolution rejecting the recommendation of the Superintendent, the Council shall transmit the resolution to the Superintendent within 10 days after its adoption and the following procedures shall apply:

(A) If the Superintendent has made an unfavorable recommendation on the application, the application is considered approved.

(B) If the Superintendent has made a favorable recommendation on the application, the application is considered disapproved.

(6) No applicant shall commence business until its application is considered approved.

(c) Any authority granted to acquire any District bank holding company or District bank shall be contingent on the review of the Superintendent and Council as provided in this subsection. Upon the filing of a complete application, the following procedures shall apply:

(1)(A) A regional bank holding company that seeks to acquire a District bank holding company or a District bank, or a nonregional bank holding company that seeks to acquire a District bank holding company or a District bank pursuant to § 26-806.1, shall file a copy of the complete draft of the application required to be filed with the Federal Reserve Board for approval of an acquisition in accordance with 12 U.S.C. § 1842. An applicant may file an application with the Federal Reserve Board at any time subsequent to filing the draft application with the Superintendent. No application required by this section shall be complete unless it is accompanied by an application fee in the amount of \$4,000.

(B) Until the Superintendent is appointed and confirmed in accordance with § 26-802.1, applications for acquisitions by regional and nonregional bank holding companies shall be reviewed in accordance with the standards set forth in both this chapter and the procedures set forth in this section, and in the District of Columbia Regional Interstate Banking Act of 1985 Amendments Act of 1985, except that the period for submission and review of applications shall commence 45 days, excluding Saturdays, Sundays, holidays, and days of Council recess, before filing with the Federal Reserve Board.

(2) The Superintendent shall make either a favorable or unfavorable recommendation on the application and explain the reasons for the recommendation, and shall transmit to the Council the recommendation, a copy of the application, and any other relevant information or submissions within 60 days from the date of receipt of the application. The Superintendent shall consider the financial and managerial resources of the bank holding company, the future prospects and stability of the subsidiaries of the bank holding company

and the bank whose assets or shares the bank holding company seeks to acquire, the financial history of the bank holding company or its subsidiary, the adequacy of the community development program, and whether the acquisition may result in undue concentration of resources or substantial decrease of competition in the District.

(3) The Council may adopt a resolution disapproving the Superintendent's recommendation within 45 days, excluding Saturdays, Sundays, holidays, and days when the Council is in recess, after receipt of the Superintendent's recommendation.

(4) If the Council fails to adopt a resolution disapproving the Superintendent's recommendation within the 45-day period, the Superintendent's recommendation shall be considered approved.

(5) If the Council adopts a resolution disapproving the recommendation of the Superintendent, the Council shall transmit the resolution to the Superintendent within 10 days after adoption of the resolution and the following procedures shall apply:

(A) If the Superintendent has made a favorable recommendation on the application, the application is considered disapproved.

(B) If the Superintendent has made an unfavorable recommendation on the application, the application is considered approved.

(6) The Superintendent shall submit a copy of the final recommendation to the Federal Reserve Board.

(7) The applicant shall include a copy of the Superintendent's final recommendation with its application to the Federal Reserve Board.

(d) Where not inconsistent with federal law:

(1) Each application filed pursuant to this section shall, where appropriate, include information applicable to the nature of the application, the applicant's general plan of business, the applicant's proposed capital investment in the District, and a community development program.

(2) The community development program shall set forth the applicant's plan to:

(A) Assist in the development of economically disadvantaged and underserved neighborhoods in the District;

(B) Assist in meeting the credit and deposit service needs of low- and moderate-income and minority District residents;

(C) Assist in expanding support for small, minority, and women-owned businesses; and

(D) Market the community development program and publicize the community development program to the applicant's employees and to individuals and businesses located in areas which the applicant will serve.

(3) To the extent considered appropriate, the Superintendent shall require that an applicant provide the following information:

(A) A description of the local community, including low- and moderate-income neighborhoods where the applicant intends to provide credit and services and from which the applicant intends to draw deposits or customers, business services which the applicant will offer to low- and moderate-income persons throughout the District, a description of these low- and moderate-

income persons, and a description of the banking services which the applicant will offer at a minimum cost to these persons. The applicant shall state its agreement to cash checks issued by the District and the United States governments at bank offices within target banking development areas, even though the bearer of the check does not maintain an account at the bank. According to normal and prudent banking practices, the bank may verify that the individual who presents the check at the bank office is legally entitled to payment;

(B) A description of the applicant's intended dividend policies;

(C) A description of the applicant's intended underwriting policies;

(D) A description of the applicant's loan policy, including the loan rates and the percentage of the total loans which will be made in low- and moderate-income areas. For the purposes of determining compliance with the requirements of this subsection, loans may include permanent mortgage financing for the purchase and rehabilitation of 1 to 4 unit owner-occupied buildings, or multi-family residential buildings, home improvement loans for single-family homes, and interim loans for construction or rehabilitation, or projects qualifying for permanent financing. For the purposes of determining compliance with the requirements of this subsection, the applicant may also offer FHA insured and VA guaranteed mortgage financing, including FHA Title 1 home improvement loans, blanket and share loans for the purchase and rehabilitation of cooperatively owned residential properties, loans made pursuant to programs established under § 47-848, or a similar homesteading program established by the District of Columbia government, participation with nonprofit developers of housing, term loans for small, minority or women-owned businesses for building construction, building improvement, inventory and fixed asset financing, and working capital;

(E) A description of any technical assistance that the applicant will offer to individuals and businesses in low- and moderate-income areas;

(F) A description of the applicant's plans to use District-based minority firms to meet the applicant's procurement needs, including goods and professional services;

(G) A description of the applicant's plans to cooperate with the District of Columbia's Department of Employment Services to identify potential District resident employees for the applicant's District offices, and a description of applicant's plans to assure the retention of existing jobs held by District residents;

(H) A description of the applicant's plans to designate a senior lending officer to review specifically the needs of small, minority, or women-owned businesses and community development organizations;

(I) A description of the applicant's plans to use its best efforts to increase the number of minority and female representatives on the applicant's board of directors and on the board of any of the applicant's District-based subsidiaries, and a description of applicant's plans to establish a training program for employees at all levels of the bank's and bank holding company's operations;

(J) A description of the applicant's plans for branching or opening new offices, and, where appropriate, a description of how those plans will aid the applicant in achieving the objectives of the community development program;

(K) A description of the applicant's plans to sell food coupons, pursuant to 7 U.S.C. § 2011 et seq., in bank offices located in the District;

(L) Any other information that the Superintendent considers appropriate; and

(M) The applicant's agreement to submit an annual report to the Superintendent and the Council updating any information submitted to the Superintendent and the Council with regard to the community development program.

(e)(1) If a bank holding company filing an application for review pursuant to this section has made in connection with that application any express written commitments to the Superintendent or the Council with respect to subjects set forth in subsection (d) of this section, the Superintendent may, at any time, review the activities of the bank holding company and of its District bank subsidiaries to determine whether the bank holding company has fulfilled the express written commitments. The Superintendent may require a bank holding company that has made the express written commitments and its District bank subsidiaries to supply the information and to submit the reports the Superintendent considers necessary in order to make a determination under this subsection.

(2) Upon the determination of the Superintendent that a bank holding company has failed to fulfill express written commitments that the bank holding company made with respect to subjects set forth in subsection (d) of this section, the Superintendent may order the bank holding company to take steps to comply with all the commitments within a reasonable period of time.

(3) If the Superintendent believes at any time that a bank holding company subject to an order issued under paragraph (2) of this subsection has failed to comply with the order within the period specified in the order, the Superintendent may conduct a hearing in accordance with § 1-1509, on the issue of whether the bank holding company has fulfilled any express written commitments that the bank holding company made with respect to subjects set forth in subsection (d) of this section.

(4) If, after a hearing as specified in paragraph (3) of this subsection, the Superintendent determines that a bank holding company has failed to fulfill express written commitments that the bank holding company made with respect to subjects set forth in subsection (d) of this section, the Superintendent may order the bank holding company to divest itself of control of all District banks and District bank holding companies within a reasonable period of time. If the Superintendent orders a bank holding company to divest itself of control of all District banks and bank holding companies pursuant to this subsection, the divestiture shall, in all events, be completed within 1 year after the date on which the Superintendent's order becomes final and not pending further review.

(5) The Superintendent's decision in a case initiated under paragraph (3) of this subsection shall be subject to judicial review by the District of Columbia Court of Appeals pursuant to § 1-1510.

(6) The Superintendent shall initiate any case under paragraph (3) of this subsection on the issue of whether a bank holding company has failed to fulfill express written commitments that the bank holding company made with respect to subjects set forth in subsection (d) of this section within 4 years of the date of acquisition of the District bank or District bank holding company in connection with which the bank holding company made the express written commitments.

(f) Any applicant which files an application with the Superintendent pursuant to this section shall also file, on the same day, a notification copy of the application with the Council.

(g) Nothing in this section shall prohibit the applicant from resubmitting to the Superintendent a disapproved application. Any resubmitted application shall be considered in accordance with the procedures set forth in this section.

(h) The Council shall hold a public hearing or public roundtable on each application transmitted to the Council by the Superintendent pursuant to this section or § 26-806.1.

(i) The Superintendent may issue rules providing for emergency circumstances under which applications may be exempted from the Council review requirement of this chapter, if the Council has not disapproved the rules pursuant to § 26-802.1. (Nov. 23, 1985, D.C. Law 6-63, § 5, 32 DCR 5954; Apr. 11, 1986, D.C. Law 6-107, § 2(c), 33 DCR 1168; Feb. 24, 1987, D.C. Law 6-192, § 10, 33 DCR 7836; Apr. 30, 1988, D.C. Law 7-104, § 27(b), 35 DCR 147; Mar. 15, 1990, D.C. Law 8-84, § 2, 37 DCR 44; Mar. 15, 1990, D.C. Law 8-91, § 2, 37 DCR 776; Aug. 17, 1991, D.C. Law 9-42, § 2(c), 38 DCR 4981.)

Section references. — This section is referred to in §§ 26-801, 26-802.1, 26-806.1, 26-807, 47-343, and 47-344.

Temporary amendment of section. — Section 2(b) of D.C. Law 8-260 amended the first sentence of (a) to read as follows:

“Any person who conducts or seeks to conduct a class of business described in § 26-802.1(b)(4), (5) or, (6) in the District shall file an application with the Superintendent for approval to do business in the District unless the person is already chartered by the appropriate federal or District agency or organized by virtue of the laws of any of the states of this Union and doing business pursuant to § 26-103(a)(1).”

Section 5(b) of D.C. Law 8-260 provided that the act shall expire on the 225th day of its having taken effect or upon the effective date of the District of Columbia Interstate Banking Act of 1985 Amendment Act of 1991, whichever occurs first.

Section 2(b) and (c) of D.C. Law 10-27 amended (a) and the introductory language of (c) to read as follows:

“(a) Any person who is not conducting a class of business described in § 26-802.1(b)(4), (5) or (6) in the District but desires to do so shall file an application with the Superintendent for approval to do business in the District. Consistent with applicable federal law, all the appli-

cations, including any supporting documents, and any other information required to be submitted to the Superintendent shall be made available to the public. Any District of Columbia bank holding company or regional bank holding company that desires to acquire a District of Columbia bank or District of Columbia bank holding company shall file an application with the Superintendent for approval of the acquisition. An application filed with the appropriate federal agency for approval to conduct a class of business described in § 26-802.1(b)(4), (5) or (6) and still pending approval or approved prior to April 11, 1986, shall not be subject to this section or the provisions of this chapter. The Council shall file comments regarding the applications pending April 11, 1986. Any Council comments regarding a pending application filed prior to April 11, 1986, shall meet the requirements of the preceding sentence.”

* * * * *

“(c) Any authority granted to acquire any District of Columbia bank holding company or District of Columbia bank shall be contingent on the review of the Superintendent and the Council, of the application required pursuant to subsection (a) of this section. Upon the filing of a complete application and the payment of the

application fee required by paragraph (1)(A) of this subsection, the following procedures shall apply:"

Section 3(b) of D.C. Law 10-27 provided that the act shall expire on the 225th day of its having taken effect or upon the effective date of the District of Columbia Regional Interstate Banking Act of 1985 Clarification Act of 1993, whichever occurs first.

Temporary addition of § 26-804.1. — Section 2(d) of D.C. Law 10-27, as amended by D.C. Law 10-255, § 50, added a § 26-804.1 to read as follows:

"The Mayor and Superintendent shall strictly enforce the provisions of this chapter and shall not grant any waiver or enter into any agreement that would permit the direct or indirect acquisition of a District of Columbia bank or District of Columbia bank holding company without full compliance with the application procedures of this chapter, including Council review and approval of the Superintendent's recommendation. Any such waiver granted or agreement entered into on or after June 15, 1993, shall be void."

Section 3(b) of D.C. Law 10-27 provided that the act shall expire on the 225th day of its having taken effect or upon the effective date of the District of Columbia Regional Interstate Banking Act of 1985 Clarification Act of 1993, whichever occurs first.

Legislative history of Law 6-63. — See note to § 26-801.

Legislative history of Law 6-107. — See note to § 26-802.1.

Legislative history of Law 6-192. — Law 6-192, the "Technical Amendments Act of 1986," was introduced in Council and assigned Bill No. 6-544, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on November 5, 1986, and November 18, 1986, respectively. Signed by the Mayor on December 10, 1986, it was assigned Act No. 6-246 and transmitted to both Houses of Congress for its review.

Legislative history of Law 7-104. — See note to § 26-801.

Legislative history of Law 8-84. — Law 8-84, the "District of Columbia Regional Interstate Banking Act of 1985 Amendment Temporary Act of 1989," was introduced in Council and assigned Bill No. 8-473. The Bill was adopted on first and second readings on November 21, 1989, and December 5, 1989, respectively. Signed by the Mayor on December 21, 1989, it was assigned Act No. 8-134 and transmitted to both Houses of Congress for its review.

Legislative history of Law 8-91. — Law 8-91, the "District of Columbia Regional Interstate Banking Act of 1985 Amendment Act of 1989," was introduced in Council and assigned Bill No. 8-456, which was referred to the Com-

mittee on Housing and Economic Development. The Bill was adopted on first and second readings on December 19, 1989, and January 20, 1990, respectively. Signed by the Mayor on January 11, 1990, it was assigned Act No. 8-142 and transmitted to both Houses of Congress for its review.

Legislative history of Law 8-260. — See note to § 26-802.1.

Legislative history of Law 9-42. — See note to § 26-811.

Legislative history of Law 10-27. — See note to § 26-802.

Legislative history of Law 10-255. — See note to § 26-802.

References in text. — The District of Columbia Regional Interstate Banking Act of 1985 Amendments Act of 1985, referred to in subparagraph (c)(1)(B), is D.C. Law 6-107.

Approval of application. — Pursuant to Resolution 8-210, the "Washington Merchant Bank Resolution of 1990," effective March 9, 1990, the Council concurred in the recommendation of the Superintendent of the District of Columbia Office of Banking and Financial Institutions to grant preliminary approval of the application for permission to organize a District of Columbia bank under the name Washington Merchant Bank.

Pursuant to Resolution 8-278, the "Proposed Acquisition of Columbia National Bank by First Maryland Bancorp Approval Resolution of 1990," effective October 26, 1990, the Council concurred in the recommendation of the Superintendent of the District of Columbia Office of Banking and Financial Institutions to recommend that the Board of Governors of the Federal Reserve System approve the application for the proposed acquisition of Columbia National Bank by First Maryland Bancorp.

Pursuant to Resolution 9-162, the "Proposed Acquisition of Sovran Bank/DC National by NCNB Corporation Approval Resolution of 1991," effective December 27, 1991, the Council concurred in the recommendation of the Superintendent of the District of Columbia Office of Banking and Financial Institutions to recommend that the Board of Governors of the Federal Reserve System approve the application for the proposed acquisition of C&S Sovran Corporation thereby Sovran Bank/DC National, by NCNB Corporation.

Proposed Acquisition of Dominion Bank of Washington, N.A., by First Union Corporation Approval Resolution of 1993. — Pursuant to Resolution 10-14, effective February 19, 1993, the Council approved the Superintendent of the District of Columbia Office of Banking and Financial Institution's favorable recommendation on the application of First Union Corporation to expand the business of banking in the District of Columbia through the acquisition of Dominion Bank of Washington, N.A.

and to recommend that the Board of Governor's of the Federal Reserve System approve the application for the proposed acquisition of Dominion Bankshares Corporation, and thereby Dominion Bank of Washington, N.A. by First Union Corporation.

Proposed Acquisition of American Security Bank, N.A., by NationsBank Corporation Emergency Approval Resolution of 1993. — Pursuant to Resolution 10-109, effective July 13, 1993, the Council approved, on an emergency basis, the Superintendent of the

District of Columbia Office of Banking and Financial Institution's favorable recommendation on the application of NationsBank Corporation to expand the business of banking in the District of Columbia through the acquisition of American Security Bank, N.A., and to recommend that the Board of Governor's of the Federal Reserve System approve the application for the proposed acquisition of MNC Financial Inc. and thereby American Security Bank of Washington, N.A. by NationsBank Corporation.

§ 26-805. Prohibited acts.

(a) Except as otherwise expressly permitted by applicable federal or District law, a bank holding company that is neither a District bank holding company nor a regional bank holding company shall not acquire a District bank holding company or a District bank.

(b) Except as otherwise required by applicable federal law, a District bank holding company or a regional bank holding company that ceases to be a District bank holding company or a regional bank holding company shall, as soon as practicable, and, in all events, within 1 year after the event, divest itself of control of all District bank holding companies and all District banks. Divestiture shall not be required if (1) the District bank holding company or the regional bank holding company ceases to be a District bank holding company or a regional bank holding company, as the case may be, because of an increase in the deposits held by bank subsidiaries not located within the region and if the increase is not the result of an acquisition of a bank holding company or bank, or (2) a District bank or District bank holding company ceases to be a District bank or District bank holding company because of an acquisition authorized by this chapter. (Nov. 23, 1985, D.C. Law 6-63, § 6, 32 DCR 5954; Apr. 11, 1986, D.C. Law 6-107, § 2(d), 33 DCR 1168.)

Legislative history of Law 6-63. — See note to § 26-801.

Legislative history of Law 6-107. — See note to § 26-802.1.

§ 26-806. Applicable laws, rules, and regulations.

Any District of Columbia bank that is controlled by a bank holding company that is not a District of Columbia bank holding company shall be subject to all laws of the District of Columbia and all rules and regulations under those laws that are applicable to District of Columbia banks that are controlled by bank holding companies all the bank subsidiaries of which are District of Columbia banks. (Nov. 23, 1985, D.C. Law 6-63, § 7, 32 DCR 5954.)

Legislative history of Law 6-63. — See note to § 26-801.

§ 26-806.1. Alternative entry by acquisition.

(a) Notwithstanding any other provisions of this chapter, 90 days after April 11, 1986, any nonregional bank holding company may make application to the Superintendent for approval to acquire:

(1) Any District bank that was in existence on December 18, 1985, and continuously operating for at least 2 years prior to that date; or

(2) Any District bank holding company all of the District bank subsidiaries of which were in existence on December 18, 1985, and that had been in existence and continuously operating for at least 2 years prior to that date. The Superintendent shall list applications for acquisition among the pending applications in the Superintendent's periodic bulletin, published in the District of Columbia Register, and mailed without charge to any person upon request. Prior to deciding whether to grant approval of the application, the Superintendent shall accept public comment on the application and shall hold a public hearing on the application, according to procedures established by the rules issued by the Superintendent. The Superintendent shall not approve the acquisitions unless it is found that the application satisfies the requirements of § 26-804, including the \$4,000 application fee, and subsection (b) of this section.

(b) An applicant under this section shall be required to demonstrate to the Superintendent that:

(1) The applicant will make loans and extend credit in a target economic development project in the District for an amount equal to or greater than .0625% of the applicant's total assets 3 years following the date of acquisition of a District bank holding company or District bank. In no event shall the amount of loans and extension of credit be less than \$50,000,000 or required to be made more than \$100,000,000, though an applicant may agree to make loans and extend credit in target economic development projects in excess of \$100,000,000, and the loans shall not include temporary financing, general obligation bonds issued by the District government, or the purchase of an interest in a pool of mortgage loans, such as mortgage participation certificates issued or guaranteed by the Federal Home Loan Mortgage Corporation, the Government National Mortgage Association, or the Farmers Home Administration;

(2) The applicant will establish at least 2 bank offices in target banking development areas, in addition to any acquired bank offices, within 3 years following the date of acquisition of a District bank or District bank holding company;

(3) The applicant will cash checks issued by the District and the United States governments at bank offices within target banking development areas, even though the bearer of the check does not maintain an account at the bank. According to normal and prudent banking practices, the bank may verify that the individual who presents the check at the bank office is legally entitled to payment;

(4) The applicant will sell food coupons pursuant to 7 U.S.C. § 2011 et seq.;

(5) The applicant will employ at least 200 District residents, or a lesser number according to a sliding scale based upon total assets to be developed by the Superintendent, but in no event less than 50, in positions located in the District that were not located in the District prior to approval of the application, within 3 years following the date of acquisition of a District bank holding company or District bank; and

(6) The applicant will promote international trade and finance within the District.

(c)(1) With its application, an applicant shall submit an irrevocable and confirmed letter of credit for \$10,000,000 from an acceptable bank, as determined by the Superintendent. The letter of credit shall name the District of Columbia as the beneficiary and shall provide that the District of Columbia Treasurer shall receive up to \$10,000,000 upon presentation to the issuer by the Superintendent of a decision and order which is reached pursuant to the procedures in subsection (f) of this section and which is a final order because all administrative and judicial appeals of the decision and order are exhausted or untimely. The letter of credit shall be established as of the date when the applicant submits its application to the Superintendent.

(2) In place of an irrevocable and confirmed letter of credit, the Superintendent may authorize the use of any other financial instrument which would assure payment of fines assessed pursuant to subsection (f) of this section.

(d) The Superintendent may reduce or extend the time within which a bank holding company shall satisfy any commitment made in connection with an application filed pursuant to this section, if the Superintendent finds that the commitment was contingent upon certain action to be taken by the District and the District does not take the action, or, upon good cause shown, the economic or financial conditions of the bank holding company justifies the action and the Council approves, by resolution, the reduction or extension.

(e) Any District bank holding company or District bank may choose not to be acquired pursuant to this section by having a resolution to that effect passed by its board of directors and shareholders. The resolution shall be forwarded to the Superintendent within 60 days after its adoption. No acquisition of a bank or bank holding company which has timely filed such a resolution shall be allowed by the Superintendent unless notice is given to the Superintendent, at the time an application is filed, that the resolution has been withdrawn or reversed by vote of the board of directors and shareholders.

(f)(1) The Superintendent may, at any time, review the activities of a nonregional bank holding company making an acquisition under this section and of its District bank subsidiaries to determine whether the nonregional bank holding company is fulfilling the commitments set forth in subsection (b) of this section. In all events, at the end of 3 years following the acquisition of a District bank or a District bank holding company under this section, the Superintendent shall review the activities of the nonregional bank holding company making the acquisition, and of its District bank subsidiaries, and shall determine whether the nonregional bank holding company has fulfilled, and is continuing to fulfill, the commitments set forth in subsection (b) of this section. The Superintendent shall complete the review and make the determi-

nation no later than 3 years and 3 months after the acquisition of a District bank or bank holding company by the nonregional bank holding company. The Superintendent may require a nonregional bank holding company making an acquisition under this section, and its District bank subsidiaries, to supply the information and to submit the reports the Superintendent considers necessary in order to make a determination under this subsection.

(2) Upon the determination of the Superintendent that a bank holding company has failed to comply with any commitment made in connection with an application filed pursuant to this section, the Superintendent shall order the company to take steps to comply with the commitment within a specified reasonable period of time. The Superintendent may extend this specified reasonable period of time.

(3) If, 30 days after the date specified for compliance by an order issued pursuant to this subsection, including any extension, the Superintendent believes that the bank holding company has not complied with the order, the Superintendent shall hold a hearing pursuant to § 1-1509, to determine whether the bank holding company has failed to comply with the order. The hearing shall be subject to judicial review by the District of Columbia Court of Appeals pursuant to § 1-1510.

(4) If, after the hearing and final order issued upon the completion of all appeals, the Superintendent concludes that the bank holding company has not complied with the Superintendent's order within the specified period of time, including any extension, the bank holding company has not undertaken a good faith effort to comply with the Superintendent's order, and the applicant has not substantially completed its commitment pursuant to this section, the Superintendent shall either:

(A) Order the bank holding company to divest itself of control of all District banks and bank holding companies within a reasonable period of time. If, the Superintendent orders a bank holding company to divest itself of control of all District banks and bank holding companies pursuant to this paragraph, the divestiture shall, in all events, be completed within 1 year after the date on which the Superintendent's order becomes final and not pending further judicial review; or

(B) Fine the bank holding company \$10,000,000 and present the decision and order, including a showing that all administrative and judicial appeals of that decision and order are exhausted or untimely, to the issuer of the \$10,000,000 letter of credit or other financial assurance required in subsection (c) of this section, and shall call upon the issuer to honor the letter of credit or other financial assurance for the full amount of \$10,000,000.

(5) If, after the hearing and final order issued upon the completion of all appeals, the Superintendent concludes that the bank holding company has not complied with the Superintendent's order within the specified period of time, including any extension, the bank holding company has not undertaken a good faith effort to comply with the Superintendent's order, and the bank holding company has substantially completed its commitment pursuant to this section, the Superintendent may fine the bank holding company up to \$10,000,000, and, if the Superintendent does fine the bank holding company, the Superin-

tendent shall present the decision and order, including a showing that all administrative and judicial appeals of that decision and order are exhausted or untimely, to the issuer of the \$10,000,000 letter of credit or other financial assurance required in subsection (c) of this section, and shall call upon the issuer to honor the letter of credit or other financial assurance for payments equal to the amount of the fines assessed pursuant to this paragraph.

(6) If, after the hearing and final order issued upon the completion of all appeals, the Superintendent concludes that the bank holding company has not complied with the Superintendent's order within the specified period of time, including any extension, the bank holding company has undertaken a good faith effort to comply with the Superintendent's order, and the bank holding company has not substantially completed its commitment pursuant to this section, the Superintendent may fine the bank holding company up to \$10,000,000, and, if the Superintendent does fine the bank holding company, the Superintendent shall present the decision and order, including a showing that all administrative and judicial appeals of that decision and order are exhausted or untimely, to the issuer of the \$10,000,000 letter of credit or other financial assurance required in subsection (c) of this section, and shall call upon the issuer to honor the letter of credit or other financial assurance for payment equal to the amount of the fines assessed pursuant to this paragraph.

(7) If, after the hearing and final order issued upon the completion of all appeals, the Superintendent concludes that the bank holding company has not complied with the Superintendent's order within the specified period of time, including any extension, the bank holding company has undertaken a good faith effort to comply with the Superintendent's order and the bank holding company has substantially completed its commitment pursuant to this section, the Superintendent may fine the bank holding company up to \$5,000,000, and, if the Superintendent does fine the bank holding company, the Superintendent shall present the decision and order, including a showing that all administrative and judicial appeals of that decision and order are exhausted or untimely to the issuer of the \$10,000,000 letter of credit or other financial assurance required in subsection (c) of this section, and shall call upon the issuer to honor the letter of credit or other financial assurance for payment equal to the amount of the fines assessed pursuant to this paragraph, but the payment shall not be greater than \$5,000,000.

(8) The Superintendent shall exercise the Superintendent's authority under paragraphs (3), (4), (5), and (6) of this subsection within 4 years of the date of the acquisition of a District bank holding company or District bank, plus any extensions and any period during which a hearing and its appeals, if any, are pending pursuant to this subsection.

(9) The Superintendent shall submit a written report of any actions that the Superintendent takes pursuant to this subsection to the Council and to the Federal Reserve Board. (Nov. 23, 1985, D.C. Law 6-63, § 7a, as added Apr. 11, 1986, D.C. Law 6-107, § 2(e), 33 DCR 1168.)

Section references. — This section is referred to in §§ 26-804 and 26-807.

Legislative history of Law 6-107. — See note to § 26-802.1.

§ 26-807. Enforcement.

(a) An action for equitable or any other appropriate relief to enforce the provisions of this chapter may be brought in any court of competent jurisdiction by:

(1) Any District of Columbia bank holding company or District of Columbia bank;

(2) Any regional bank holding company that has a District of Columbia bank subsidiary (other than a District of Columbia bank subsidiary that was acquired either pursuant to 12 U.S.C. § 1730a(m) or 12 U.S.C. § 1823(f), or in the regular course of securing or collecting a debt previously contracted in good faith, as provided in 12 U.S.C. § 1842(a)); or

(3) The Corporation Counsel of the District of Columbia in the name of the District of Columbia.

(b) Each bank holding company making the submission to the Superintendent required by § 26-804 or § 26-806.1 shall include in that submission a statement identifying a registered agent and registered office for the bank holding company. The registered agent shall be an agent of the bank holding company upon whom process of law against the company may be served. All notices or demands required or permitted by law may be served upon the registered agent. The registered agent and office may be the same as that used by the District bank holding company or District bank sought to be acquired or established. The appointment of a registered agent for purposes of this section must meet the requirements imposed on a foreign corporation's appointment of a registered agent and office by § 29-399.7. If the bank holding company fails to properly appoint or maintain a registered agent and office in the District, the Mayor shall be an agent of the bank holding company upon whom any process of law, notice, or demand against the bank holding company may be served. All matters served upon the Mayor pursuant to this section shall be handled in the same manner as matters served upon the Mayor on behalf of foreign corporations pursuant to § 29-399.9(b) and (d). The appointment of a registered agent pursuant to this section may not be revoked or modified, except that a new registered agent may be substituted, so long as any liability for the fines imposed by this chapter remains outstanding against the bank holding company. Upon satisfaction of any liability, the appointment may be revoked or otherwise modified, unless the bank holding company is otherwise required by law to maintain the registered agent and office. (Nov. 23, 1985, D.C. Law 6-63, § 8, 32 DCR 5954; Apr. 11, 1986, D.C. Law 6-107, § 2(f), 33 DCR 1168.)

Legislative history of Law 6-63. — See note to § 26-801.

Legislative history of Law 6-107. — See note to § 26-802.1.

References in text. — “12 U.S.C. § 1730a,” referred to in (a)(2), was repealed by Pub. L. 101-73, Title IV, § 407, August 9, 1989, 103 Stat. 363.

§ 26-807.1. Insurance.

(a) Any bank or trust company established or created pursuant to this chapter shall be required to be insured with the Federal Deposit Insurance Corporation pursuant to 12 U.S.C. § 1811 et seq.

(b) Any savings and loan association established or created pursuant to this chapter shall be required to be insured with the Federal Savings and Loan Insurance Corporation pursuant to 12 U.S.C. § 1724 et seq. (Nov. 23, 1985, D.C. Law 6-63, § 8a, as added Apr. 11, 1986, D.C. Law 6-107, § 2(g), 33 DCR 1168.)

Legislative history of Law 6-107. — See note to § 26-802.1.

References in text. — “12 U.S.C. § 1724 et seq.,” referred to in (b), was repealed by Pub. L. 101-73, Title IV, § 407, August 9, 1989, 103 Stat. 363.

The “Federal Savings and Loan Insurance

Corporation”, referred to in (b), has been abolished. For provisions relating to the abolition of the Federal Savings and Loan Insurance Corporation and the transfer of functions, personnel and property of that agency, see §§ 401 to 406 of Pub.L. 101-73, set out as a note under 12 U.S.C. § 1437.

§ 26-807.2. Penalties.

(a) Any company violating any provision of this chapter or any rule issued pursuant to it shall be subject to a penalty of not more than \$100 per day for each day the violation continues unless a different penalty is specified in this chapter for the violation, in which case the specified penalty shall apply. Any penalty imposed shall be recovered in a civil action in the name of the District of Columbia.

(b) Any company wilfully violating this chapter or any rule or regulation issued pursuant to this chapter shall be subject to a penalty of not more than \$1,000 a day for each day the violation continues unless a different penalty is specified in this chapter for the violation, in which case the specified penalty shall apply.

(c) The Superintendent shall report violations to the Corporation Counsel who may institute a civil action therefor on behalf of the District of Columbia.

(d) Any applicant that fails to comply with requirements concerning filing with the Superintendent and the Council prior to filing with the Federal Reserve Board shall be fined \$500 per day for each day the violation continues, but in no event shall the fine imposed by this subsection exceed \$5,000, except that no fine or penalty under this subsection shall be assessed for failure to comply with this section if the application concerns an acquisition under circumstances constituting an emergency, pursuant to 12 U.S.C. § 1842(b), or where the applicant believes, in good faith, that the application concerns such an acquisition, so long as the applicant, as soon as practicable before or after filing with the Federal Reserve Board, files a copy of the application and any notice of approval or disapproval by the Federal Reserve Board with the Superintendent. (Nov. 23, 1985, D.C. Law 6-63, § 8b, as added Apr. 11, 1986, D.C. Law 6-107, § 2(h), 33 DCR 1168.)

Legislative history of Law 6-107. — See note to § 26-802.1.

§ 26-808. Nonseverability.

Repealed. Apr. 11, 1986, D.C. Law 6-107, § 2(i), 33 DCR 1168.

Cross references. — As to general rule of severability, see § 49-601.

Legislative history of Law 6-107. — See note to § 26-802.1.

§ 26-809. Review of impact.

(a) Three years after November 23, 1985, the committee of the Council which has oversight of banking regulations shall convene a public hearing to receive testimony that will aid the committee in determining whether passage of this chapter:

(1) Has led to the creation of an increased number of jobs for District residents;

(2) Has increased the availability of commercial banking services for District residents and businesses, including minority and women-owned businesses;

(3) Has increased, or otherwise altered, local lending and investment by District of Columbia banks that have been acquired by District of Columbia or regional bank holding companies;

(4) Has led to a strengthening of the local commercial banking market; or

(5) Has otherwise benefited the residents of the District of Columbia.

(b) The committee shall use the information acquired at the hearing required by subsection (a) of this section to determine whether the District should continue to participate in the regional reciprocal interstate banking arrangement provided for in this chapter and if so, for what period and to what extent. The committee may also determine whether a limit should be imposed on the number of banks or on the percentage of District deposits controlled by a single company; whether specific capitalization, employment, and location requirements should be imposed on out-of-state bank holding companies wishing to acquire District banks or bank holding companies; and whether specific plans detailing how the acquiror and acquiree intend to serve deposit and credit needs of District residents should be required. As soon as practicable after conclusion of the hearing, but no later than 6 months after the hearing, the committee shall file with the Office of the Secretary a recommendation or recommendations for Council action to alter the provisions of this chapter, if necessary. (Nov. 23, 1985, D.C. Law 6-63, § 10, 32 DCR 5954.)

Legislative history of Law 6-63. — See note to § 26-801.

§ 26-809.1. Applicability.

(a) Except as expressly provided, the following laws shall not apply to national banks organized pursuant to 12 U.S.C. §§ 21 to 95, members of Federal Home Loan Banks as defined in 12 U.S.C. §§ 1422 to 1424, and Federal Credit Unions as defined in 12 U.S.C. § 1752, but shall apply to all banks, savings companies, trust companies, related holding companies, or other banking institutions in the District of Columbia:

(1) Sections 26-101, 26-102, 26-401 through 26-436, and 26-501 through 26-517;

(2) Sections 26-701 through 26-712;

- (3) Section 26-103;
- (4) Sections 26-201 and 26-202;
- (5) Sections 26-104, 26-107, 26-108, and 26-109;
- (6) Sections 26-105 and 26-106;
- (7) Sections 26-110, 26-203, and 26-204;
- (8) Chapter 3 of this title;
- (9) Section 26-505; and
- (10) Sections 26-601 through 26-604.

(b) The Superintendent shall not have the power to regulate the authority or activities of a bank holding company or bank in a manner which, directly or indirectly, cause it to operate its national banking subsidiary in a manner which violates federal requirements. (Nov. 23, 1985, D.C. Law 6-63, § 10a, as added Apr. 11, 1986, D.C. Law 6-107, § 2(j), 33 DCR 1168.)

Legislative history of Law 6-107. — See note to § 26-802.1.

§ 26-810. Use of women-owned banks.

(a) Recipients of District of Columbia government contracts are encouraged to use women-owned banks and federally or District chartered minority-owned banks certified by the Minority Business Opportunity Commission in accordance with § 1-1141 et seq.

(b) The Mayor shall, pursuant to subchapter I of Chapter 15 of Title 1, issue rules to implement the provisions of this section within 90 days of March 16, 1989. All rules issued pursuant to this subsection shall be transmitted to the Council for review. (Nov. 23, 1985, D.C. Law 6-63, § 10b as added Mar. 16, 1989, D.C. Law 7-187, § 2(b), 35 DCR 8648.)

Legislative history of Law 7-187. — Law 7-187, the “District of Columbia Minority Bank Encouragement Amendment Act of 1988,” was introduced in Council and assigned Bill No. 7-471, which was referred to the Committee on Housing and Economic Development. The Bill was adopted on first and second readings on

October 25, 1988 and November 15, 1988, respectively. Signed by the Mayor on December 1, 1988, it was assigned Act No. 7-249 and transmitted to both Houses of Congress for its review.

Legislative history of Law 8-260. — See note to § 26-802.1.

§ 26-811. Administrative procedure; cease and desist orders.

(a)(1) If, in the opinion of the Superintendent, a District banking corporation or a director, officer, employee, agent, or other person who participates in the conduct of the affairs of the banking corporation, engages in an unsafe or unsound practice in conducting the business of the bank or violates or is about to violate a law, rule, regulation, written condition imposed by the Superintendent in connection with the grant of any application or request, or any written agreement entered into with the Superintendent, the Superintendent may institute an administrative action against the bank or person by the issuance of a Notice of Charges.

(2) If, in the opinion of the Superintendent, a person or a director, officer, employee, agent, or other person who participates in the conduct of the affairs of the person violates or is about to violate a law, rule, regulation, written condition imposed by the Superintendent in connection with the grant of any application or request, or any written agreement entered into with the Superintendent, the Superintendent may institute an administrative action against the person by the issuance of a Notice of Charges.

(b) The Notice of Charges shall set forth the basis for the administrative action and shall set a time and place for a hearing to determine whether a cease and desist order shall issue based on the Notice of Charges. The hearing shall be held within 60 days after the service of the Notice of Charges unless another date is set by the hearing officer at the request of 1 of the parties.

(c) In the event of a consent or default or if, upon the record at the hearing, the Superintendent finds that any violation or practice alleged in the Notice of Charges is established by a preponderance of the evidence, the Superintendent may issue an order to cease and desist from the violation or practice. The order may require the bank or person or director, officer, employee, agent, or other person who participates in the conduct of the affairs of the bank or person to cease and desist from the violation or practice, and take affirmative action to correct the violation or practice or any condition that results from the violation or practice. The affirmative action may include indemnification, reimbursement, restitution, or any other relief that the Superintendent deems appropriate.

(d) The cease and desist order shall become effective 30 days after service or, in the case of consent, shall become effective immediately. The order shall remain effective and enforceable unless the order is stayed, modified, terminated, or set aside by the Superintendent or a reviewing court.

(e) If, in the opinion of the Superintendent, a violation or practice or threatened violation or practice of this chapter or § 26-103 is likely to cause insolvency, substantial dissipation of the assets or earnings of the bank or person, or serious prejudice to the interests of the depositors or customers of the bank or person, the Superintendent, through the Office of the Corporation Counsel, may:

(1) Petition the court to issue a restraining order to prevent the continuance of the violation or practice or threatened violation or practice, pending completion of the Superintendent's administrative proceeding;

(2) Petition the court to appoint a receiver with any power or duty that the court may direct to preserve the assets of the corporation or person in accordance with §§ 29-391 and 29-392 ("Business Corporation Act"). Notwithstanding the provisions of §§ 29-391 and 29-392, a court may appoint a receiver to preserve the assets of a person and shall not be required to liquidate the assets of a corporation or person unless warranted;

(3) Petition the court to freeze or seize the assets of the bank or person consistent with applicable law; or

(4) Petition the court for an order for the involuntary dissolution of a corporation pursuant to § 29-389 if the corporation exceeded or abused the authority conferred upon the corporation by Chapter 3 of Title 29. (Nov. 23,

1985, D.C. Law 6-63, § 10c, as added Aug. 17, 1991, D.C. Law 9-42, § 2(d), 38 DCR 4981.)

Legislative history of Law 9-42. — Law 9-42, the “District of Columbia Interstate Banking Act of 1985 Amendment Act of 1991,” was introduced in Council and assigned Bill No. 9-37, which was referred to the Committee on Economic Development. The Bill was

adopted on first and second readings on June 4, 1991, and July 2, 1991, respectively. Signed by the Mayor on July 24, 1991, it was assigned Act No. 9-79 and transmitted to both Houses of Congress for its review.

§ 26-812. Hearings.

Any administrative hearing held in accordance with this chapter shall be held pursuant to Chapter 15 of Title 1, unless the Superintendent determines that a public proceeding would jeopardize or adversely affect the safety and soundness of the bank or the public interest. If the Superintendent makes the determination, the hearing may be held in private session. (Nov. 23, 1985, D.C. Law 6-63, § 10d, as added Aug. 17, 1991, D.C. Law 9-42, § 2(d), 38 DCR 4981.)

Legislative history of Law 9-42. — See note to § 26-811.

§ 26-813. Enforcement.

Any order issued pursuant to this chapter may be enforced in the Superior Court of the District of Columbia. (Nov. 23, 1985, D.C. Law 6-63, § 10e, as added Aug. 17, 1991, D.C. Law 9-42, § 2(d), 38 DCR 4981.)

Legislative history of Law 9-42. — See note to § 26-811.

CHAPTER 9. SAVINGS AND LOAN ACQUISITION.

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§ 26-901. Definitions.

For the purposes of this chapter, the term:

(1) “Acquire” means:

(A) The merger or consolidation of 1 association with another association or with a savings and loan holding company or the merger of 1 savings and loan holding company with another savings and loan holding company;

(B) The acquisition by an association or savings and loan holding company of direct or indirect ownership or control of voting shares of an association or of a savings and loan holding company if, after the acquisition, the association or savings and loan holding company making the acquisition will directly or indirectly own or control more than 5% of any class of voting shares of the other association or savings and loan holding company;

(C) The direct or indirect acquisition by an association or a savings and loan holding company of all or substantially all of the assets of another association or savings and loan holding company; or

(D) Any other action that would result in direct or indirect control by an association or savings and loan holding company of another association or savings and loan holding company.

(2) “Association” means a mutual or capital stock savings and loan association, building and loan association, or savings bank chartered under the laws of any 1 of the states or by the Federal Home Loan Bank Board pursuant to the federal act.

(3) “Branch” or “branch office” means any office or other fixed location where an association has the authority to accept deposits and make loans, except:

(A) An automatic teller machine, point of sale terminal, or other similar unmanned electronic banking facility at which deposits may be accepted;

(B) An office located outside the United States;

(C) A loan production office or representative office;

(D) A service corporation office where deposits are not accepted; or

(E) Any other fixed location where deposits are not accepted.

(4) “Company” means “company” as defined in 12 U.S.C. § 1730a(a)(1)(C) (“National Housing Act”).

(5) “Control” means “control” as defined in 12 U.S.C. § 1730a(a)(2).

(6) “Deposit” means any demand, time, or savings deposit, savings share account, withdrawable or repurchasable share, investment certificate, or other savings account or savings deposit account made by an individual, corporation, partnership, state or federal governmental unit, or any other organization, without regard to the location of the depositor. The term “deposit” shall not include a deposit by a foreign government, foreign official institution, or other associations. For purposes of this chapter, determination of deposits shall be made by reference to regulatory reports made by or to state or federal regulatory authorities.

(7) “District” means the District of Columbia.

(8) “District association” means an association organized under the laws of the District or a federal association that:

(A) Has its principal place of business in the District;

(B) Is not controlled by a company other than a District association, a District savings and loan holding company, a regional association, or a regional savings and loan holding company; and

(C) Has more than 80% of its total deposits other than deposits located in branch offices acquired pursuant to an emergency supervisory acquisition under federal law, held in branch offices located in the region.

(9) “District savings and loan holding company” means a savings and loan holding company that:

(A) Has its principal place of business in the District;

(B) Is not controlled by a company other than District association, District savings and loan holding company, regional association, or regional savings and loan holding company; and

(C) Has more than 80% of the total deposits held by all of its association subsidiaries, other than association subsidiaries acquired pursuant to an emergency supervisory acquisition under federal law, held by association subsidiaries in branch offices located within the region.

(10) “Federal act” means the Home Owners’ Loan Act of 1933, approved June 13, 1933 (48 Stat. 128; 12 U.S.C. 1461 et seq.).

(11) “Federal association” means an association chartered by the Federal Home Loan Bank Board pursuant to the federal act.

(12) “Low- and moderate-income area” means any area within the District that the Superintendent, by rule, designates as a low- and moderate-income area after consideration of the income levels of residents within the area and the mix and locations of the levels of income of residents within the area.

(13) “Nonregional association” means any association that is neither a District association nor a regional association.

(14) “Nonregional savings and loan holding company” means any savings and loan holding company that is neither a District savings and loan holding company nor a regional savings and loan holding company.

(15) “Person” means an individual or a company.

(16) “Principal place of business of an association” means the state in which the aggregate deposits of the association are the largest.

(17) “Principal place of business of a savings and loan holding company” means the state where the total deposits held by the offices of the association subsidiaries of the savings and loan holding company are the largest.

(18) "Region" means the states of Alabama, Arkansas, Delaware, Florida, Georgia, Kentucky, Louisiana, Maryland, Mississippi, North Carolina, Pennsylvania, South Carolina, Tennessee, Virginia, and West Virginia, and the District.

(19) "Regional association" means an association other than a District association, organized under the laws of 1 of the states in the region or under the laws of the United States that:

(A) Has its principal place of business in a state in the region other than the District;

(B) Is not controlled by a company other than a regional association or a regional savings and loan holding company; and

(C) Has more than 80% of its total deposits, other than deposits located in branch offices or association subsidiaries acquired pursuant to 12 U.S.C. § 1730a(m) ("Garn-St. Germain Act"), or comparable provisions in federal or state law, held by association subsidiaries in branches located within the region.

(20) "Regional savings and loan holding company" means a savings and loan holding company other than a District savings and loan holding company that:

(A) Has its principal place of business in a state in the region;

(B) Is not controlled by a company other than a regional association or a regional savings and loan holding company; and

(C) Has more than 80% of the total deposits of its association subsidiaries, other than association subsidiaries acquired pursuant to 12 U.S.C. § 1730a(m) or comparable provisions in federal or state law, held by association subsidiaries in branches located within the region.

(21) "Savings and loan holding company" means any company that directly or indirectly controls an association or any other company which is a savings and loan holding company.

(22) "Service corporation" means any corporation, the majority of the capital stock of which is owned by 1 or more associations, that engages, directly or indirectly, in any activity which may be engaged in by a service corporation under the laws of 1 of the states or under the laws of the United States.

(23) "State" means any state of the United States or the District.

(24) "Subsidiary" means "subsidiary" as defined in 12 U.S.C. § 1730a(A)(1)(H).

(25) "Superintendent" means the Superintendent of Banking and Financial Institutions.

(26) "Target development area" means any low- and moderate-income area within the District or any area which the Superintendent, by rule, designates as an underserved area.

(27) "Target economic development project" means any commercial, industrial, residential real estate, business, or other economic development activity that the Superintendent, in consultation with the Council and the District of Columbia Office of Business and Economic Development ("OBED"), determines to be beneficial to residents in low- and moderate-income areas or small businesses in low- and moderate-income areas based on policies set forth

in the District of Columbia Comprehensive Plan of 1984, effective April 10, 1984 (D.C. Law 5-76; 31 DCR 1049), and placing special emphasis on economic development project activity in economically distressed areas which have been historically underserved.

(28) “Underserved area” means any area which the Superintendent, in consultation with the Council and OBED designates as an “underserved area” based on the availability of deposit, loan, and credit services within the area to satisfy housing and small business needs or the availability and need for other financial services within the area.

(29) “Women-owned” means that at least 51% of the savings and loan association is owned by a woman or women who make the policy decisions and actually manage day-to-day operations. (Oct. 12, 1988, D.C. Law 7-175, § 2, 35 DCR 6133; Mar. 16, 1989, D.C. Law 7-187, § 3(a), 35 DCR 8648.)

Section references. — This section is referred to in § 26-911.

Legislative history of Law 7-175. — Law 7-175, the “District of Columbia Savings and Loan Acquisition Amendment Act of 1988,” was introduced in Council and assigned Bill No. 7-399, which was referred to the Committee on Housing and Economic Development. The Bill was adopted on first and second readings on June 28, 1988 and July 12, 1988, respectively. Signed by the Mayor on August 1, 1988, it was assigned Act No. 7-235 and transmitted to both Houses of Congress for its review.

Legislative history of Law 7-187. — Law 7-187, the “District of Columbia Minority Banks Encouragement Amendment Act of 1988,” was introduced in Council and assigned Bill No. 7-471, which was referred to the Committee on Housing and Economic Development. The Bill was adopted on first and second readings on October 25, 1988 and November 15,

1988, respectively. Signed by the Mayor on December 1, 1988, it was assigned Act No. 7-249 and transmitted to both Houses of Congress for its review.

References in text. — “12 U.S.C. § 1730a,” referred to in (4), (5), (19)(C), (20)(C), and (24), was repealed by Pub. L. 101-73, Title IV, § 407, August 9, 1989, 103 Stat. 363.

The Home Owners’ Loan Act of 1933, approved June 13, 1933, referred to in (10), as amended, is referred to as “The Home Owners’ Loan Act.”

The “Federal Home Loan Bank Board”, referred to in paragraphs (2) and (11), has been abolished. For provisions relating to the abolition of the Federal Home Loan Bank Board and the transfer of functions, personnel and property of that agency, see §§ 401 to 406 of Pub.L. 101-73, set out as a note under 12 U.S.C. § 1437.

§ 26-902. Authorization of regional acquisitions.

(a) A regional association, regional savings and loan holding company, District association, or District savings and loan holding company may acquire a District association or District savings and loan holding company on the approval of the Superintendent, if and only if, each of the following requirements is met:

(1) The laws of the state in which the regional association or regional savings and loan holding company making the acquisition has its principal place of business permit the regional association or regional savings and loan holding company to be acquired by the District association or District savings and loan holding company sought to be acquired;

(2) Either the District association sought to be acquired has been in existence and continuously operating for more than 2 years or all of the District association subsidiaries of the District savings and loan holding company sought to be acquired have been in existence and continuously operating for more than 2 years, if the acquisition is by a regional association

or regional savings and loan holding company. A regional association or regional savings and loan holding company may acquire an association or savings and loan holding company organized solely for the purpose of facilitating the acquisition of a District association that has been in existence and continuously operating for more than 2 years or a District savings and loan holding company, all of the District association subsidiaries of which have been in existence and continuously operating for more than 2 years;

(3) The acquisition complies with conditions, restrictions, requirements, or other limitations that would apply to the acquisition by a District association or District savings and loan holding company of an association or savings and loan holding company located in the state in which the regional association or regional savings and loan holding company making the acquisition has its principal place of business, but that would not apply to the acquisition by an association or savings and loan holding company, all of whose branches or association subsidiaries are located in that state, if the acquisition is by a regional association or regional savings and loan holding company; and

(4) The acquisition, when the acquisition results in a regional association, will not be prejudicial to the interests of the depositors, members, or shareholders of an acquired District association or the general public upon consideration of, at least, the following factors:

(A) The character, experience, and financial responsibility of the association or savings and loan holding company seeking to make the acquisition, its directors and officers, if applicable, and any proposed new directors and officers to control and operate a District association or District savings and loan holding company; and

(B) The future prospects and stability of the association or savings and loan holding company sought to be acquired.

(b) Subject to the provisions of this section, a District association organized under the laws of the District may apply to the Superintendent to consolidate or merge with, transfer all or substantially all of its assets to, or effect a statutory merger with a regional association.

(c)(1) A regional association or a regional savings and loan holding company having a District association subsidiary, a District saving and loan holding company subsidiary, or branches in the District, acquired other than pursuant to an emergency supervisory acquisition under federal law or resulting from the regular course of securing or collecting a debt previously contracted in good faith, may apply to the Superintendent to acquire another District association or a District savings and loan holding company on the approval of the Superintendent and appropriate federal authorities.

(2) The approval of the Superintendent shall be subject to any laws and regulations applicable to the acquisition of District associations and District savings and loan holding companies by an association or savings and loan holding company whose branches, association subsidiaries, or association subsidiary branches are located in the District. (Oct. 12, 1988, D.C. Law 7-175, § 3, 35 DCR 6133.)

Section references. — This section is referred to in §§ 26-506, 26-904, 26-906, and 26-916.

Legislative history of Law 7-175. — See note to § 26-901.

§ 26-903. Authorization of regional branches.

(a) Ninety days after October 12, 1988, a regional association or a regional savings and loan holding company may obtain a certificate of authority to establish, maintain, and acquire branches in the District on approval of the Superintendent.

(b) Before granting approval, the Superintendent shall determine that each of the following requirements is met:

(1) The laws of the state in which the branching regional association or regional savings and loan holding company has its principal place of business authorize District associations or District savings and loan holding companies to establish or maintain branches in that state on terms and conditions reasonably equivalent to those applicable to the establishment or maintenance of branches in the District by District associations and District savings and loan holding companies and on terms and conditions reasonably equivalent to those applicable to the establishment or maintenance of branches in that state by an association or savings and loan holding company located in that state;

(2) The establishment or maintenance of a branch complies with conditions, restrictions, requirements, or other limitations that would apply to the branching of a District association or District savings and loan holding company in the state in which the regional association or regional savings and loan holding company has its principal place of business, but that would not apply to the branching of an association or savings and loan holding company, all of whose branches or association subsidiaries are located in that state; and

(3) The establishment or maintenance of a branch will not be prejudicial to the interests of the general public; among the factors to be considered by the Superintendent in making a determination under this paragraph are the character, experience, and financial responsibility of the association or savings and loan holding company seeking to establish a branch and its directors and officers. (Oct. 12, 1988, D.C. Law 7-175, § 4, 35 DCR 6133.)

Section references. — This section is referred to in §§ 26-904, 26-906, and 26-916.

Legislative history of Law 7-175. — See note to § 26-901.

§ 26-904. Conditions for regional acquisitions and regional branches.

(a) When not inconsistent with federal law, the Superintendent shall require each association or savings and loan holding company seeking to make an acquisition under § 26-902 or seeking to branch under § 26-903 to file information applicable to the nature of the application, a general plan of business, a proposed plan for capital investment in the District, and a community development program. In determining whether and to what extent the submissions are appropriate, the Superintendent shall consider the overall

purposes and resources of the savings and loan industry. The community development program shall set forth the applicant's plan to:

- (1) Assist in the development of economically-disadvantaged and underserved neighborhoods in the District;
- (2) Assist in meeting the credit and deposit service needs of low- and moderate-income and minority District residents;
- (3) Assist in expanding support for small, minority, or women-owned businesses; and
- (4) Market the community development program and publicize the community development program to the applicant's employees and to individuals and businesses located in areas which the applicant will serve.

(b) To the extent considered appropriate by the Superintendent, the Superintendent shall require that an applicant seeking to make an acquisition under § 26-902 or seeking to branch under § 26-903 provide the following:

- (1) A description of the local community, including low- and moderate-income neighborhoods where the applicant intends to provide credit and services and from which the applicant intends to draw deposits or customers;
- (2) A description of the business services which the applicant will offer to low- and moderate-income persons, and a description of the services which the applicant will offer, at a minimum cost, to these persons;
- (3) The applicant's agreement to cash checks issued by the District and the United States governments at branch offices within target development areas upon verification, according to normal and prudent industry practices, that an individual who presents the check at the branch office is legally entitled to payment, even though the bearer of the check does not maintain an account at the branch office;
- (4) A description of the applicant's intended dividend policies;
- (5) A description of the applicant's intended underwriting policies;
- (6) A description of the applicant's loan policy, including the loan rates and the percentage of the total loans which will be made in low- and moderate-income areas. For purposes of determining compliance with the requirements of this subsection, loans may include permanent mortgage financing for the purchase and rehabilitation of 1 to 4 unit owner-occupied buildings or multi-family residential buildings, home improvement loans for single-family homes, or interim loans for construction, rehabilitation, or projects qualifying for permanent financing;
- (7) A description of any technical assistance that the applicant will offer to individuals and businesses in low- and moderate-income areas;
- (8) A description of the applicant's plans to use District-based minority firms to meet the applicant's procurement needs, including goods and professional services;
- (9) A description of the applicant's plans to cooperate with the District's Department of Employment Services ("DOES") to identify District residents as potential employees for the applicant's District offices;
- (10) A description of the applicant's plan to assure the retention of existing jobs held by District residents;

(11) A description of the applicant's plans to designate a senior lending officer to review specifically the needs of small, minority, or women-owned businesses and community development organizations;

(12) A description of the applicant's plans to use its best efforts to increase the number of minority and female representatives on the applicant's board of directors and, if applicable, on the board of any of the applicant's District-based association subsidiaries;

(13) A description of the applicant's plans to establish a training program for employees at all levels of the association's, and, if applicable, the savings and loan holding company's operations;

(14) A description of the applicant's plans for branching or operating new offices, and, where appropriate, a description of how those plans will aid the applicant in achieving the objectives of the community development program;

(15) A description of the applicant's plans to sell food coupons, pursuant to 7 U.S.C. § 2011 et seq. ("Food Stamp Act"), in branch offices located in the District;

(16) The applicant's agreement to submit an annual report to the Superintendent updating any information submitted to the Superintendent with regard to the community development program; and

(17) Any other information that the Superintendent considers appropriate.

(c) For purposes of determining compliance with the requirements of this section, loans may include:

(1) Permanent mortgage financing for the purchase and rehabilitation of 1 to 4 unit owner-occupied buildings or multi-family residential buildings;

(2) Home improvement loans for single-family homes, or interim loans for construction, rehabilitation, or projects qualifying for permanent financing;

(3) Federal Housing Administration ("FHA") insured and Veterans Administration ("VA") guaranteed mortgage financing, including FHA title 1 home improvement loans;

(4) Blanket and share loans for the purchase and rehabilitation of cooperatively-owned residential properties;

(5) Loans made pursuant to programs established pursuant to § 47-848, or a similar homesteading program established by the District;

(6) Participation with nonprofit developers of housing;

(7) Term loans for small, minority, or women-owned businesses for building construction, building improvement, inventory or fixed asset financing; or

(8) Working capital.

(d)(1) If an applicant filing an application pursuant to § 26-902 or § 26-903 has made in connection with that application any express written commitments to the Superintendent with respect to subjects set forth in subsections (a), (b), or (c) of this section, the Superintendent may, at any time, review the activities of the applicant to determine whether the applicant has fulfilled the express written commitments. The Superintendent may require an applicant to supply information and to submit any report the Superintendent considers necessary to make a determination under this paragraph.

(2) Upon the determination of the Superintendent that an applicant filing an application pursuant to § 26-902 or § 26-903 has failed to fulfill express

written commitments that the applicant made with respect to subjects set forth in subsections (a), (b), or (c) of this section, the Superintendent may order the applicant to take steps to comply with all the commitments within a reasonable period of time.

(3) If the Superintendent believes, at any time, that an applicant, subject to an order issued under paragraph (2) of this subsection, has failed to comply with the order within the period specified in the order, the Superintendent may conduct a hearing in accordance with § 1-1509, on the issue of whether the applicant has fulfilled any express written commitments that the applicant made with respect to subjects set forth in subsections (a), (b), or (c) of this section.

(4) If, after a hearing as specified in paragraph (3) of this subsection, the Superintendent determines that an applicant has failed to fulfill express written commitments made with respect to subjects set forth in subsections (a), (b), or (c) of this section, the Superintendent may:

(A) Order the applicant to divest itself of control of all District associations and District savings and loan holding companies and of all District branches of any other subsidiary association within a reasonable period of time if the applicant has acquired a District association or District savings and loan holding company pursuant to § 26-902. If the Superintendent orders divestiture pursuant to this subparagraph, the divestiture shall be completed within 1 year after the date on which the Superintendent's order becomes final; or

(B) Order the revocation of the certificate of authority and a cessation of operations under the certificate within a reasonable period of time if the applicant is branching pursuant to § 26-903; if the Superintendent orders the cessation of business being conducted under the certificate, the cessation of business shall be completed within 1 year after the date on which the Superintendent's order becomes final.

(5) The Superintendent's decision in a case initiated under paragraph (3) of this subsection shall be subject to judicial review by the District of Columbia Court of Appeals in accordance with § 1-1510.

(6) The Superintendent shall initiate any case under paragraph (3) of this subsection of the issue of whether an association or savings and loan holding company has failed to fulfill express written commitments that the association or savings and loan holding company made with respect to subjects set forth in subsections (a), (b), or (c) of this section within 4 years of the date of the acquisition of the District association or District savings and loan holding company subject to the express written commitments.

(e) The Superintendent shall rule on any application submitted under §§ 26-902 and 26-903 no later than 90 days following the date of submission of a complete application, but the ruling may be conditioned upon approval by federal regulatory authorities or contain other appropriate conditions. The Superintendent may extend the 90-day period for up to 30 days. If the Superintendent fails to rule on the application within the 90-day period, or any extension, the application shall be deemed approved.

(f) For purposes of § 26-902(a)(1) through (3) and (c)(1) and (2), a District association shall be treated as if it were a District savings and loan holding

company if the laws of the state where the acquiring association or savings and loan holding company has its principal place of business would permit the regional association or a regional savings and loan holding company to be acquired by a District savings and loan holding company, but not by a District association. (Oct. 12, 1988, D.C. Law 7-175, § 5, 35 DCR 6133.)

Section references. — This section is referred to in §§ 26-506 and 26-915.

Legislative history of Law 7-175. — See note to § 26-901.

§ 26-905. Authorization of nonregional acquisitions.

(a) Ninety days after October 12, 1988, a nonregional association or a nonregional savings and loan holding company may acquire, on the approval of the Superintendent:

(1) A District association that has been in existence on January 1, 1988, and continuously operating for at least 2 years prior to that date or a District savings and loan holding company, all of the District association subsidiaries of which were in existence on January 1, 1988, and continuously operating for at least 2 years prior to that date; or

(2) A District association or District savings and loan holding company organized solely for the purpose of facilitating the acquisition of a District association that was in existence on January 1, 1988, and continuously operating for at least 2 years prior to that date or a District savings and loan holding company, all of the District association subsidiaries of which were in existence on January 1, 1988, and continuously operating for at least 2 years prior to that date.

(b) Before granting approval, the Superintendent shall determine that:

(1) The applicant will make loans and extend credit to a target economic development project in the District for an amount equal to or greater than .0625% of the applicant's total assets within 3 years following the date of the acquisition of a District association or a District savings and loan holding company.

(2) The applicant will establish at least 2 branch offices in target development areas, in addition to any acquired branch offices, within 3 years following the date of acquisition of a District association or savings and loan holding company.

(3) The applicant will cash checks issued by the District and the United States governments at branch offices within target development areas upon verification, according to normal and prudent industry practices, that the individual who presents the check at the branch office is legally entitled to payment even though the bearer of the check does not maintain an account at the branch office.

(4) The applicant will sell food coupons pursuant to 7 U.S.C. § 2011 et seq.

(5) The applicant will employ District residents, according to a sliding scale based upon total assets to be developed by the Superintendent, in positions located in the District that were not located in the District prior to approval of the acquisition within 3 years following the date of acquisition of a District association or District savings and loan holding company.

(c) Once an area has been designated as a “target development area” or once a project has been determined to be a “target economic development project” and identified by an applicant in an application that is approved pursuant to this section, that designation or determination is final for the applicant and any future revision in the designation of target development areas or target economic development projects shall have no effect on the applicant.

(d)(1) Except as provided in paragraph (2) of this subsection, an applicant shall submit with its application an irrevocable and confirmed letter of credit from an acceptable bank or association, as determined by the Superintendent. The letter of credit shall name the District as the beneficiary and provide that the District of Columbia Treasurer receive a sum set by the Superintendent upon presentation to the issuer by the Superintendent of a decision and final order reached pursuant to subsection (g) of this section. The letter of credit shall be established on the date when the applicant submits its application to the Superintendent.

(2) In place of an irrevocable and confirmed letter of credit, the Superintendent may authorize the use of any other financial instrument that would assure payment of fines assessed pursuant to subsection (g) of this section.

(e) The Superintendent may reduce or extend the time within which an association or savings and loan holding company shall satisfy any commitment made in connection with an application filed pursuant to this section if the Superintendent finds that the commitment was contingent upon certain action to be taken by the District that the District has not taken or the economic or financial conditions of the association or savings and loan holding company justify the action and the savings and loan holding company justifies the action.

(f) Any District association or District savings and loan holding company may elect not to be acquired pursuant to this section by passing a resolution to that effect by its board of directors and shareholders or board of directors and members. The resolution shall be forwarded to the Superintendent within 60 days after its adoption. No acquisition of an association or savings and loan holding company, which has timely filed a resolution, shall be allowed by the Superintendent, unless notice is given to the Superintendent, at the time an application is filed, that the resolution has been withdrawn or reversed by vote of the board of directors and shareholders or board of directors and members.

(g)(1) The Superintendent may, at any time, review the activities of a nonregional association or a nonregional savings and loan holding company making an acquisition under this section and its District association subsidiaries to determine whether the nonregional association or nonregional savings and loan holding company is fulfilling the commitments set forth in subsection (b) of this section. At the end of 3 years following the acquisition of a District association or a District savings and loan holding company by a nonregional association or a nonregional savings and loan holding company under this section, the Superintendent shall review the activities of the nonregional association or the nonregional savings and loan holding company and its District association subsidiaries and shall determine whether the nonregional association or nonregional savings and loan holding company has

fulfilled and is continuing to fulfill the commitments set forth in subsection (b) of this section. The Superintendent shall complete the review and make the determination no later than 39 months after the acquisition of a District association or District savings and loan holding company by the nonregional association or nonregional savings and loan holding company. The Superintendent may require a nonregional association or a nonregional savings and loan holding company making an acquisition under this section and its District association subsidiaries to supply information and to submit any report the Superintendent considers necessary to make a determination under this subsection.

(2) Upon the determination of the Superintendent that an association or savings and loan holding company has failed to comply with any commitment made in connection with an application filed pursuant to this section, the Superintendent shall order the association or savings and loan holding company to take steps to comply with the commitment within a specified reasonable period of time. The Superintendent may extend this specified reasonable period of time.

(3) If, 30 days after the date specified for compliance with an order issued pursuant to paragraph (2) of this subsection, including any extension, the Superintendent determines that the association or savings and loan holding company has not complied with the order, the Superintendent shall hold a hearing pursuant to § 1-1509 to determine whether the association or savings and loan holding company has failed to comply with the order. The hearing shall be subject to judicial review by the District of Columbia Court of Appeals pursuant to § 1-1510.

(4) If, after the hearing and final order issued upon the completion of all appeals, the Superintendent concludes that the association or savings and loan holding company has not complied with the order issued by the Superintendent pursuant to paragraph (2) of this subsection within the specified period of time, including any extension, the Superintendent shall either:

(A) Order the association or savings and loan holding company to divest itself of control of all District associations and all District branches of any other subsidiary association within a reasonable period of time. If the Superintendent orders divestiture pursuant to this paragraph, the divestiture shall be completed within 1 year after the date on which the Superintendent's order became final; or

(B) Fine the association or savings and loan holding company not more than \$1,000 a day and present the decision, final order, and letter of credit or other financial assurance required in subsection (d) of this section to the insurer and call upon the issuer to honor the letter of credit or other financial assurance for payment equal to the amount of the fine assessed pursuant to this paragraph.

(5) When determining whether to order divestiture or to impose a fine and the amount, the Superintendent shall consider the efforts made by the association or savings and loan holding company to comply with the Superintendent's order and whether the association or savings and loan holding company has substantially completed its commitment pursuant to subsection (b) of this section.

(6) The Superintendent shall exercise his or her authority under paragraphs (3), (4), and (5) of this subsection within 4 years of the date of the acquisition of a District savings and loan holding company or District association, plus any extensions and any period during which a hearing and its appeals are pending pursuant to this subsection.

(7) The Superintendent shall submit a written report of any actions that the Superintendent takes pursuant to this subsection to the Council and to the appropriate state or federal regulatory authority.

(h) Subject to the provisions of this section, a District association organized under the laws of the District may consolidate or merge with, transfer all or substantially all of its assets to, or effect a statutory merger with a nonregional association.

(i) The Superintendent shall list applications for acquisitions pursuant to this section in the Superintendent's periodic bulletin published in the District of Columbia Register. (Oct. 12, 1988, D.C. Law 7-175, § 6, 35 DCR 6133.)

Section references. — This section is referred to in §§ 26-906 and 26-915.

Legislative history of Law 7-175. — See note to § 26-901.

§ 26-906. Review of applications.

(a) Prior to deciding whether to grant approval of the application under §§ 26-902, 26-903, or § 26-905, the Superintendent shall accept public comment on the application and shall hold a public hearing on the application, according to procedures established by rules issued by the Superintendent.

(b) The Superintendent shall make either a favorable or unfavorable recommendation on the application, explain the reasons for his or her recommendation, and submit to the Council his or her recommendation and explanation, a copy of the application, and any other relevant information or submissions within 90 days after receipt of the application. The Superintendent may extend this 90-day period for up to an additional 60 days. No application required by §§ 26-902, 26-903, or § 26-905, shall be complete unless it is accompanied by an application fee in an amount to be established by the Superintendent and made payable to the District of Columbia Treasurer. No entity required to obtain issuance shall commence operations until the applicant has submitted evidence that the insurance has been obtained.

(c) The Council may adopt a resolution disapproving the Superintendent's recommendation within 45 days, excluding Saturdays, Sundays, legal holidays, and days of Council recess, after receipt of the Superintendent's recommendation.

(d) If the Council fails to adopt a resolution disapproving the Superintendent's recommendation within the 45-day period, the Superintendent's recommendation shall be deemed approved. (Oct. 12, 1988, D.C. Law 7-175, § 7, 35 DCR 6133.)

Legislative history of Law 7-175. — See note to § 26-901.

§ 26-907. Prohibitions.

(a) Except as otherwise expressly permitted by this chapter or other applicable District or federal law, an association or savings and loan holding company that is not a District association or District savings and loan holding company or is not a regional association or regional savings and loan holding company:

(1) May not acquire a District association or savings and loan holding company; and

(2) May not acquire a regional association or regional savings and loan holding company that controls a District association or District savings and loan holding company.

(b)(1) Except as provided under paragraph (2) of this subsection, if a District association or District savings and loan holding company or regional association or regional savings and loan holding company ceases to be a District association, District savings and loan holding company, regional association, or regional savings and loan holding company, the association or savings and loan holding company shall, within 2 years, divest itself of all District associations and District savings and loan holding companies and all District branches of any other subsidiary association.

(2) A regional savings and loan holding company, regional association, District savings and loan holding company, or District association may not be required to divest its District associations, District savings and loan holding companies, or District branches if:

(A) An institution in another state, not within the region, was or is acquired pursuant to an emergency supervisory acquisition under federal law;

(B) An association having branches in a state other than within the region was or is acquired in the regular course of securing or collecting a debt previously contracted in good faith and the association or savings and loan holding company divests the association or branches acquired outside of the region within 2 years of the date of the acquisition;

(C) An increase in deposits in branches or association subsidiaries, not within the region, is the result of an occurrence other than de novo branching or the acquisition of an association or savings and loan holding company; or

(D) The change in status results from an acquisition authorized by this chapter. (Oct. 12, 1988, D.C. Law 7-175, § 8, 35 DCR 6133.)

Legislative history of Law 7-175. — See note to § 26-901.

§ 26-908. District status.

(a) A District association that is controlled by a savings and loan holding company other than a District savings and loan holding company shall be subject and entitled to the benefit of all laws of the District and the rules promulgated pursuant to laws relating to the acquisition, ownership, affiliations, branching, and operations of District associations controlled by District savings and loan holding companies.

(b) Any restrictions, limitations, prohibitions, or requirements pursuant to this section pertaining to the conduct of business in the District by an association or savings and loan holding company shall not apply to corporate, business, investment, or other activities of the association or savings and loan holding company outside the District.

(c) An association or a savings and loan holding company that controls an association or branches located in the District shall file with the Superintendent:

(1) Copies of all regular and periodic reports that the savings and loan association or savings and loan holding company is required to file under §§ 13 and 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. §§ 78m and 78o(d)), excluding any portions not required to be made available to the public; and

(2) Any other information regarding the District association or branches that the Superintendent shall require by rule.

(d) The Superintendent shall promptly notify the Council of any regional or nonregional associations and savings and loan holding companies that control District associations or have District association subsidiaries that fail or refuse to submit information as required in subsection (c) of this section. (Oct. 12, 1988, D.C. Law 7-175, § 9, 35 DCR 6133.)

Legislative history of Law 7-175. — See note to § 26-901.

§ 26-909. Rules.

The Superintendent shall, pursuant to subchapter I of Chapter 15 of Title 1, issue proposed rules to implement the provisions of this chapter. The proposed rules shall be submitted to the Council for a 45-day review period, excluding Saturdays, Sundays, legal holidays, and days of Council recess. If the Council does not approve or disapprove the proposed rules, in whole or in part, by resolution within this 45-day review period, the proposed rules shall be deemed approved. Nothing in this section shall affect the requirements imposed upon the Mayor by subchapter I of Chapter 15 of Title 1. (Oct. 12, 1988, D.C. Law 7-175, § 10, 35 DCR 6133.)

Legislative history of Law 7-175. — See note to § 26-901.

§ 26-910. Continued operations of existing associations and savings and loan holding companies.

(a) This chapter shall not be construed to require divestiture by an association or a savings and loan holding company that acquired its subsidiary District association or District savings and loan holding company prior to October 12, 1988.

(b) This chapter shall not require a regional association that, on October 12, 1988, has branch offices in the District and conducts business in the District to divest itself of any branch offices or to cease or otherwise limit its business or

branching activities in the District. (Oct. 12, 1988, D.C. Law 7-175, § 11, 35 DCR 6133.)

Legislative history of Law 7-175. — See note to § 26-901.

§ 26-911. Status after conversion.

(a) An association's status as a regional association shall not be affected by the association's conversion, after October 12, 1988, from a federal charter to a charter issued by a state in the region or by the association's conversion from a state charter to a federal charter, so long as the association otherwise continues to qualify as a regional association under the provisions of § 26-901(19).

(b) An association's status as a District association or a regional association may not be affected by the association's conversion, after October 12, 1988, from an association insured by the Federal Deposit Insurance Corporation to an association insured by the Federal Savings and Loan Insurance Corporation or by the association's conversion from an association insured by the Federal Savings and Loan Insurance Corporation to an association insured by the Federal Deposit Insurance Corporation so long as the association continues to be a District association or a regional association as defined in § 26-901(8) or § 26-901(19). (Oct. 12, 1988, D.C. Law 7-175, § 12, 35 DCR 6133.)

Legislative history of Law 7-175. — See note to § 26-901.

References in text. — The "Federal Savings and Loan Insurance Corporation", referred to in (b), has been abolished. For provisions

relating to the abolition of the Federal Savings and Loan Insurance Corporation and the transfer of functions, personnel and property of that agency, see §§ 401 to 406 of Pub.L. 101-73, set out as a note under 12 U.S.C. § 1437.

§ 26-912. Insurance.

Following an acquisition pursuant to this chapter, the deposits of any resulting association doing business in the District shall be insured by either the Federal Deposit Insurance Corporation pursuant to 12 U.S.C. § 1811 et seq., or the Federal Savings and Loan Insurance Corporation pursuant to 12 U.S.C. § 1724 et seq. (Oct. 12, 1988, D.C. Law 7-175, § 13, 35 DCR 6133.)

Legislative history of Law 7-175. — See note to § 26-901.

References in text. — "12 U.S.C. § 1724 et seq." was repealed by Pub. L. 101-73, Title IV, § 407, August 9, 1989, 103 Stat. 363.

The "Federal Savings and Loan Insurance Corporation", referred to in this section, has

been abolished. For provisions relating to the abolition of the Federal Savings and Loan Insurance Corporation and the transfer of functions, personnel and property of that agency, see §§ 401 to 406 of Pub.L. 101-73, set out as a note under 12 U.S.C. § 1437.

§ 26-913. Federal exclusion.

This chapter shall not be construed to:

(1) Grant the Superintendent or any other District agency jurisdiction over a federal association or any merger or consolidation of a federal association in which an association chartered by the District is not a party; or

(2) Subject any federal association to any law or rule of the District or its agencies to which it is not otherwise subject. (Oct. 12, 1988, D.C. Law 7-175, § 14, 35 DCR 6133.)

Legislative history of Law 7-175. — See note to § 26-901.

§ 26-914. Cooperative agreements and examinations.

(a) The Superintendent shall examine all nonfederal District associations controlled by an association or savings and loan holding company and all District branches controlled by an association or savings and loan holding company.

(b) The Superintendent may enter into cooperative agreements with any other savings and loan regulatory agency to facilitate the regulation and examination of any savings and loan association or savings and loan holding company doing business in the District.

(c) The Superintendent may accept a report of an examination or other records from any other regulatory unit instead of conducting its own examinations of interstate associations or associations controlled by savings and loan holding companies located in other jurisdictions.

(d) The Superintendent may take any action jointly with any other regulatory agency having concurrent jurisdiction over savings and loan associations and savings and loan holding companies in the District or may take action independently to carry out the responsibilities of the Superintendent. (Oct. 12, 1988, D.C. Law 7-175, § 15, 35 DCR 6133.)

Legislative history of Law 7-175. — See note to § 26-901.

§ 26-915. Remedies.

(a) The Superintendent shall report violations of any provision of this chapter to the Corporation Counsel. The Corporation Counsel may institute a civil action on behalf of the District for equitable or any other appropriate relief, including the imposition of civil fines provided in this section, unless different procedures or means of obtaining relief are specified in this chapter for the violation.

(b) Any person violating any provision of this chapter or any rule issued pursuant to this act shall be subject to a civil fine of not more than \$1,000 per day for each day the violation continues, up to a maximum of \$30,000 for a single violation, unless a different penalty is specified in § 26-904(d)(4)(A), § 26-904(d)(4)(B) or § 26-905(g)(4)(B) for the violation, in which case the specified penalty shall apply.

(c) Any person who wilfully violates this chapter or any rule issued pursuant to this chapter shall be subject to a civil fine of not more than \$5,000 a day for each day the violation continues, up to a maximum of \$150,000, unless a different penalty is specified in § 26-904(d)(4)(A), § 26-904(d)(4)(B),

or § 26-905(g)(4)(B) for the violation, in which case the specified penalty shall apply. (Oct. 12, 1988, D.C. Law 7-175, § 16, 35 DCR 6133.)

Legislative history of Law 7-175. — See note to § 26-901.

§ 26-916. Registered agent.

(a) Each association or savings and loan holding company making an application to the Superintendent under § 26-902 or § 26-903 shall include in that application a statement identifying a registered agent and registered office for the association or savings and loan holding company. The registered agent shall be an agent of the association or savings and loan holding company upon whom process may be served. All notices or demands required or permitted by law may be served upon the registered agent. The registered agent and office may be the same as that used by the District association or District savings and loan holding company sought to be acquired. The appointment of a registered agent for purposes of this section shall meet the requirements imposed on a foreign corporation's appointment of a registered agent and office by § 29-399.7.

(b) If the association or savings and loan holding company fails to appoint or maintain a registered agent and office in the District, the Mayor shall serve as the agent of the association or savings and loan holding company upon whom any process, notice, or demand against the association or savings and loan holding company may be served. All matters served upon the Mayor pursuant to this section shall be handled in the same manner as matters served upon the Mayor on behalf of foreign corporations pursuant to § 29-399.9(b) and (d).

(c) The appointment of a registered agent pursuant to this section may not be revoked or modified, except that a new registered agent may be substituted, as long as any liability for the penalties imposed by this chapter remains outstanding against the association or savings and loan holding company. Upon satisfaction of any liability, the appointment may be revoked or otherwise modified, unless the association or savings and loan holding company is otherwise required by law to maintain the registered agent and office. (Oct. 12, 1988, D.C. Law 7-175, § 17, 35 DCR 6133.)

Legislative history of Law 7-175. — See note to § 26-901.

§ 26-917. Use of minority-owned savings and loan associations.

(a) Recipients of the District of Columbia government contracts are encouraged to use federally and District chartered minority-owned savings and loan associations certified by the Minority Business Opportunity Commission in accordance with § 1-1141 et seq.

(b) The Mayor shall, pursuant to subchapter I of Chapter 15 of Title 1, issue rules to implement the provisions of this section within 90 days of March 16,

1989. All rules issued pursuant to this subsection shall be transmitted to the Council for review. (Oct. 12, 1988, D.C. Law 7-175, § 17a, as added Mar. 16, 1989, D.C. Law 7-187, § 3(b), 35 DCR 8648.)

Legislative history of Law 7-187. — See note to § 26-901.

TITLE 27. CEMETERIES AND CREMATORIES.

Chapter

1. Cemetery Associations; Regulatory Provisions..... §§ 27-101 to 27-131.

CHAPTER 1. CEMETERY ASSOCIATIONS; REGULATORY PROVISIONS.

Sec.	Sec.
27-101. Incorporation; powers.	27-117. Register of burials; contents.
27-102. Powers to acquire and sell land.	27-118. Superintendent of cemetery to register at Department of Human Services.
27-103. Burial ground to be platted and surveyed.	27-119. Movement or disposal of tissue taken from dead body.
27-104. Inclosure and ornamentation of land; purchase of equipment.	27-120. Keeping and exhibiting dead bodies.
27-105. Duty to inclose and underdrain.	27-121. Place of burial.
27-106. Application of proceeds of sales of lots.	27-122. Mode of burial.
27-107. Officers enumerated; term of office; effect of failure to choose officers.	27-123. Reopening graves; graves of pestilential disease victims.
27-108. Election of officers.	27-124. Crematories; consent of property owners; permit.
27-109. Lot owners are voting members of corporation.	27-125. Embalming; removal of tissue immediately after death.
27-110. Bylaws.	27-126. Penalty.
27-111. Exemption from taxation and sale on execution.	27-127. Prosecutions.
27-112. Dedication of land; title vested in perpetuity.	27-128. Court-ordered disinterment or disposal of ashes not affected.
27-113. Grants and bequests for care of lots.	27-129. Cremation required in certain cases.
27-114. Distance from City and from dwellings.	27-130. Public crematory established.
27-115. Mayor authorized to license certain lands for cemetery purposes.	27-131. Act for promotion of anatomical science not affected by crematory law.
27-116. Lots to be conspicuously marked; plat to be recorded; size and depth of graves.	

§ 27-101. Incorporation; powers.

When 5 or more persons shall associate themselves together for the purpose of forming a cemetery association in the District, such persons shall have the power to adopt a corporate name, and by that name shall be known as a body corporate, and by that name shall have perpetual succession and be invested with all powers, rights, privileges, liabilities, and immunities incident to corporations, and may have a common seal, and may alter or change the same at their pleasure. (Mar. 3, 1901, 31 Stat. 1294, ch. 854, § 658; 1973 Ed., § 27-101.)

Cross references. — As to permissible locations for cemeteries, see §§ 27-114 and 27-116.
As to public crematory, see § 27-130.

Section references. — This section is referred to in §§ 27-106, 27-107, 27-108, and 27-128.

§ 27-102. Powers to acquire and sell land.

Such persons so associated shall have power to acquire by gift, grant, or purchase any lot or lots of land not exceeding 50 acres, and lay out the same for a burial place for the dead, with convenient aisles, and to sell the same for such

purpose and for no other purposes, reserving a sufficient portion thereof for the burial of the stranger and indigent. (Mar. 3, 1901, 31 Stat. 1294, ch. 854, § 659; 1973 Ed., § 27-102.)

Cross references. — As to formal requisites for conveyances by corporations, see § 45-502.

Section references. — This section is referred to in §§ 27-106, 27-107, and 27-128.

§ 27-103. Burial ground to be platted and surveyed.

They shall cause the land designed as a burial ground to be surveyed and platted, and a plat of the ground so surveyed shall be recorded in the Office of the Surveyor of the District. Each lot shall be duly numbered by the Surveyor and such number shall be marked on the plat and recorded. (Mar. 3, 1901, 31 Stat. 1294, ch. 854, § 660; 1973 Ed., § 27-103.)

Cross references. — As to duties of Surveyor concerning plats, see § 1-905 et seq.

Section references. — This section is referred to in §§ 27-106, 27-107, and 27-128.

§ 27-104. Inclosure and ornamentation of land; purchase of equipment.

Such association shall have power to inclose and ornament their burial ground, to build and erect a hearse house, and keep the same in proper repair; to purchase a hearse or hearses, and to do all other necessary acts to the end that all the appliances, conveniences, and benefits of a public and private cemetery may be obtained. (Mar. 3, 1901, 31 Stat. 1294, ch. 854, § 661; 1973 Ed., § 27-104.)

Section references. — This section is referred to in §§ 27-106, 27-107, and 27-128.

§ 27-105. Duty to inclose and underdrain.

It shall be the duty of the owner or owners of any cemetery or cemeteries in the District to inclose such cemetery or cemeteries with good and sufficient walls or fences to prevent entrance thereto or exit therefrom except by gates provided for that purpose. Such cemetery or cemeteries shall, if required by the Mayor of said District, be underdrained to such a depth as will prevent water remaining in any grave or vault therein. (Mar. 3, 1901, 31 Stat. 1295, ch. 854, § 671; 1973 Ed., § 27-105.)

Section references. — This section is referred to in §§ 27-106, 27-107, and 27-128.

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of

the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to

§ 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

§ 27-106. Application of proceeds of sales of lots.

The proceeds arising from the sale of lots, after deducting all expenses of purchasing and laying out the same, shall be applied, appropriated, and used in improving and ornamenting the burial ground, or for other purposes named in §§ 27-101 to 27-114, 27-116 to 27-118, 27-119 to 27-128. (Mar. 3, 1901, 31 Stat. 1294, ch. 854, § 662; 1973 Ed., § 27-106.)

Section references. — This section is referred to in §§ 27-107 and 27-128.

Sales of monuments and markers. — A tax-exempt religious organization, which operates a public cemetery as part of its religious activity, is authorized to sell monuments and

markers for use in the cemetery, where the proceeds of the sales are used solely for the maintenance of the cemetery grounds. *Clagett v. Vestry of Rock Creek Parish*, 241 F. Supp. 950 (D.D.C. 1965).

§ 27-107. Officers enumerated; term of office; effect of failure to choose officers.

The officers of any such corporation shall be a president, a treasurer (who shall act as a secretary), and not less than 3 directors, who shall be severally chosen annually by ballot, and shall hold office until their successors are chosen. Any neglect to choose officers on the day fixed upon for that purpose shall not operate as a forfeiture of the act of incorporation, in accordance with the provisions of §§ 27-101 to 27-114, 27-116 to 27-118, 27-119 to 27-128. (Mar. 3, 1901, 31 Stat. 1294, ch. 854, § 663; 1973 Ed., § 27-107.)

Section references. — This section is referred to in §§ 27-106 and 27-128.

§ 27-108. Election of officers.

The first election of officers by the persons associating, according to and for the purpose specified in § 27-101, shall be at the time and place designated and agreed upon by a majority of the persons so associating themselves together, and no other than such persons shall vote at such election. (Mar. 3, 1901, 31 Stat. 1295, ch. 854, § 664; 1973 Ed., § 27-108.)

Section references. — This section is referred to in §§ 27-106, 27-107, and 27-128.

§ 27-109. Lot owners are voting members of corporation.

At each subsequent election of officers of any such corporation the owner of a lot in said burial ground shall be entitled to 1 vote in the election of officers of the corporation and no more, and shall, by virtue of such membership, be a member of the corporation. (Mar. 3, 1901, 31 Stat. 1295, ch. 854, § 665; 1973 Ed., § 27-109.)

Section references. — This section is referred to in §§ 27-106, 27-107, and 27-128.

§ 27-110. Bylaws.

Each corporation shall have power to establish and change bylaws and prescribe rules and regulations for its government and the duties of its officers and the management of its property. (Mar. 3, 1901, 31 Stat. 1295, ch. 854, § 666; 1973 Ed., § 27-110.)

Section references. — This section is referred to in §§ 27-106, 27-107, and 27-128.

§ 27-111. Exemption from taxation and sale on execution.

The property of any such corporation, its grounds, lots, and appliances, shall be exempt from taxation and shall not be liable to sale on execution. (Mar. 3, 1901, 31 Stat. 1295, ch. 854, § 667; 1973 Ed., § 27-111.)

Section references. — This section is referred to in §§ 27-106, 27-107, and 27-128.

§ 27-112. Dedication of land; title vested in perpetuity.

Any person desiring to dedicate any lot of land, not exceeding 5 acres, as a burial place for the interment of the dead for the use of any society, association, or neighborhood may, by deed duly executed and recorded, convey such land to the District of Columbia, by the corporate name of said District of Columbia, specifying in such deed the society, association, or neighborhood for the use of which the dedication is desired to be made, and thereby (provided such conveyance shall be accepted by the Mayor of the District of Columbia) vest the title to such land in perpetuity, for the uses stated in the deed, and such land shall be thereafter exempt from taxes for all purposes whatever. (Mar. 3, 1901, 31 Stat. 1295, ch. 854, § 668; 1973 Ed., § 27-112.)

Section references. — This section is referred to in §§ 27-106, 27-107, and 27-128.

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner.

The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

§ 27-113. Grants and bequests for care of lots.

It shall be lawful for such association to take and hold any grant, donation, or bequest upon trust to apply the income thereof, under the direction of the board of managers, for the embellishment, preservation, renewal, or repair of

any tomb, monument, gravestone, or other structure, fence, railing, or other inclosure in or around any cemetery lot, or for the planting and cultivation of any trees, shrubs, flowers, or plants in or around any cemetery lot, according to the terms of such grant, donation, or bequest; and the court having probate jurisdiction shall have full power and jurisdiction to compel the due performance of such trusts, or any of them, upon a bill filed by the proprietor of any lot in such cemetery for that purpose. (Mar. 3, 1901, 31 Stat. 1295, ch. 854, § 669; June 25, 1936, 49 Stat. 1921, ch. 804; June 25, 1948, 62 Stat. 991, ch. 646, § 32(b); May 24, 1949, 63 Stat. 107, ch. 139, § 127; July 29, 1970, 84 Stat. 576, Pub. L. 91-358, title I, § 158(c)(3); 1973 Ed., § 27-113.)

Section references. — This section is referred to in §§ 27-106, 27-107, and 27-128.

Trusts for perpetual maintenance. — This section permits trusts for the perpetual maintenance of cemetery lots and monuments

or other structures erected thereon, and is not in conflict with the rule against perpetuities. *Iglehart v. Iglehart*, 204 U.S. 478, 27 S. Ct. 329, 51 L. Ed. 575 (1907).

§ 27-114. Distance from City and from dwellings.

No person or persons or cemetery association shall lay out any new cemetery, or part of any cemetery, within the City of Washington, in the District of Columbia, nor in said District, within one and one-half miles from the boundaries of said City; no person or cemetery association shall, in said District, lay out any cemetery, or part of any cemetery, within less than 200 yards of any dwelling house, except with the written consent of the owner, lessee, and occupant of such house, nor without a permit to do so from the Mayor of said District. (Mar. 3, 1901, 31 Stat. 1295, ch. 854, § 670; 1973 Ed., § 27-114.)

Section references. — This section is referred to in §§ 27-106, 27-107, 27-115, and 27-128.

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners

under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

§ 27-115. Mayor authorized to license certain lands for cemetery purposes.

Without regard to the provisions of § 27-114, the Mayor of the District of Columbia is hereby authorized to license for cemetery purposes any parcel of land in the District of Columbia which does not exceed 1 acre in size, and which, except for a 1-side frontage of less than 100 feet on a public street or highway, is otherwise completely bounded by land dedicated to cemetery purposes. (July 14, 1956, 70 Stat. 538, ch. 594, § 1; 1973 Ed., § 27-114a.)

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and

Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

§ 27-116. Lots to be conspicuously marked; plat to be recorded; size and depth of graves.

It shall be the duty of the owner or owners of any cemetery or cemeteries in the District to divide the area to be used for graves into lots of reasonable size, to be permanently designated by conspicuous marks, so that the position of each may be readily determined, each lot to be duly numbered. A plat of such cemetery showing the area so divided, the division into lots, and the number of each such lot shall be filed in the Office of the Surveyor of said District; the grave spaces hereafter laid out for the burial of persons above 10 years of age to be at least 8 feet by 3 feet, and those for the burial of children under 10 years of age at least 6 feet by 2 feet, or, if preferred by said owner or owners, one-half the measurement of the adult grave space, namely, 4 feet by 3 feet. No coffin shall be buried in said District so that any part thereof is within less than 4 feet of the ordinary level of the ground, unless it contains the body of a child under 12 years of age, when it shall not be less than 3 feet below that level. (Mar. 3, 1901, 31 Stat. 1295, 1297, ch. 854, §§ 672, 681; 1973 Ed., § 27-115.)

Cross references. — As to powers and duties of Surveyor concerning plats, see § 1-905 et seq.

Section references. — This section is referred to in §§ 27-106, 27-107, and 27-128.

§ 27-117. Register of burials; contents.

It shall be the duty of the owner or owners of any cemetery or cemeteries in the District to cause to be kept in the office of the superintendent or person in charge of such cemetery or cemeteries a register showing the number of each lot, the name, age, cause of death, and date of burial of each person or persons buried in any such lot or grave space, and the number of the burial permit authorizing such burial. In cases of disinterment said register shall show the date of such disinterment and the number of the official permit therefor opposite the name of the person whose remains are disinterred. Such register shall be at all times open to inspection by duly authorized representatives of the Department of Human Services and of the Police Department of said District. (Mar. 3, 1901, 31 Stat. 1296, ch. 854, § 673; 1973 Ed., § 27-116.)

Section references. — This section is referred to in §§ 27-106, 27-107, and 27-128.

Health Department abolished. — The

Health Department of the District of Columbia, including the office of the head thereof, was abolished and the functions thereof transferred

to the Board of Commissioners of the District of Columbia by Reorganization Plan No. 5 of 1952. Reorganization Order No. 57 of the Board of Commissioners, dated June 30, 1953, and Reorganization Order No. 52, dated June 30, 1953, combined and redesignated Organization Order No. 141, dated February 11, 1964, established under the direction and control of a Commissioner, a Department of Public Health headed by a Director, for the purpose of planning, implementing, and directing public health and hospital care programs, and for performing certain other allied medical and paramedical functions. The Anatomical Board was established under the direction and control of the Director of Public Health consisting of members as prescribed in the D.C. Code. Prior to redesignation, the Order abolished the previously existing Health Department, Gallinger

Hospital, Glenn Dale Sanatorium, and the Anatomical Board, and transferred their functions and positions to the new Department. The organization of the new Department was set out in the Order. The executive functions of the Board of Commissioners were transferred to the Commissioner of the District of Columbia by § 401 of Reorganization Plan No. 3 of 1967. Functions stated in Organization Order No. 141 were transferred to the Director of the Department of Human Resources by Commissioner's Order No. 69-96, dated March 7, 1969, as amended by Commissioner's Order No. 70-83, dated March 6, 1970. The Department of Human Resources was replaced by Reorganization Plan No. 2 of 1979, dated February 21, 1980, which Plan established the Department of Human Services.

§ 27-118. Superintendent of cemetery to register at Department of Human Services.

It shall be the duty of the superintendent or person in charge of any cemetery or other place for the disposal of dead bodies of human beings in the District of Columbia to register his or her name at the office of the Department of Human Services of said District, giving full name, residence, and place of business, and in case of removal from one place to another in said District to make change in such register accordingly. (Mar. 3, 1901, 31 Stat. 1296, ch. 854, § 674; 1973 Ed., § 27-117.)

Section references. — This section is referred to in §§ 27-106, 27-107, and 27-128.

Health Department abolished. — The Health Department of the District of Columbia, including the office of the head thereof, was abolished and the functions thereof transferred to the Board of Commissioners of the District of Columbia by Reorganization Plan No. 5 of 1952. Reorganization Order No. 57 of the Board of Commissioners, dated June 30, 1953, and Reorganization Order No. 52, dated June 30, 1953, combined and redesignated Organization Order No. 141, dated February 11, 1964, established under the direction and control of a Commissioner, a Department of Public Health headed by a Director, for the purpose of planning, implementing, and directing public health and hospital care programs, and for performing certain other allied medical and paramedical functions. The Anatomical Board was established under the direction and control of the Director of Public Health consisting of

members as prescribed in the D.C. Code. Prior to redesignation, the Order abolished the previously existing Health Department, Gallinger Hospital, Glenn Dale Sanatorium, and the Anatomical Board, and transferred their functions and positions to the new Department. The organization of the new Department was set out in the Order. The executive functions of the Board of Commissioners were transferred to the Commissioner of the District of Columbia by § 401 of Reorganization Plan No. 3 of 1967. Functions stated in Organization Order No. 141 were transferred to the Director of the Department of Human Resources by Commissioner's Order No. 69-96, dated March 7, 1969, as amended by Commissioner's Order No. 70-83, dated March 6, 1970. The Department of Human Resources was replaced by Reorganization Plan No. 2 of 1979, dated February 21, 1980, which Plan established the Department of Human Services.

§ 27-119. Movement or disposal of tissue taken from dead body.

The Council of the District of Columbia may, by act, authorize tissue banks operating pursuant to Chapter 16 of Title 2, or other persons subject to regulations made pursuant to Chapter 16 or 15 of Title 2, or both, to remove, transport, or dispose of tissue taken from such dead body. (Mar. 3, 1901, 31 Stat. 1296, ch. 854, §§ 675, 676; Sept. 22, 1950, 64 Stat. 904, ch. 985, § 1; Sept. 10, 1962, 76 Stat. 536, Pub. L. 87-656, § 10; May 26, 1970, 84 Stat. 270, Pub. L. 91-268, § 9(f); 1973 Ed., § 27-119a; Oct. 8, 1981, D.C. Law 4-34, § 29(c)(1), 28 DCR 3271.)

Cross references. — As to penalties for unlawful trafficking in dead bodies and grave robbery, see §§ 2-1406 and 22-3103.

As to penalty for violation of this section, see § 2-1604.

Section references. — This section is referred to in §§ 2-1601, 2-1602, 2-1603, 2-1604, 2-1606, 2-1607, 27-106, 27-107, and 27-128.

Legislative history of Law 4-34. — Law 4-34, the “Vital Records Act of 1981,” was introduced in Council and assigned Bill No. 4-161,

which was referred to the Committee on Human Services. The Bill was adopted on first and second readings on June 16, 1981, and June 30, 1981, respectively. Signed by the Mayor on July 20, 1981, it was assigned Act No. 4-58 and transmitted to both Houses of Congress for its review.

Cited in *Laney v. United States*, 294 F. 412 (D.C. Cir. 1923); *Vann v. District of Columbia Bd. of Funeral Dirs. & Embalmers, App. D.C.*, 480 A.2d 688 (1984).

§ 27-120. Keeping and exhibiting dead bodies.

No dead body or part thereof shall be kept in said District in such manner as to give rise to any offensive odors to the annoyance of any person or persons in the neighborhood or to the public, nor so as to be exposed to the public view; nor shall any such body or part thereof be permitted by the person or persons having custody or control of it to remain unburied for a longer period than 1 week after death without permission of the Director of the Department of Human Services, unless it has been cremated or deposited in the vault of some cemetery; nor shall any person publicly exhibit in said District, for pay or otherwise, any dead body of any human being or any part of such body without a permit from the Director of the Department of Human Services of said District so to do, except such exhibition be in connection with some government museum or with some institution of learning permanently located in said District. (Mar. 3, 1901, 31 Stat. 1297, ch. 854, § 677; Aug. 1, 1950, 64 Stat. 393, ch. 513, § 1; 1973 Ed., § 27-120; Oct. 8, 1981, D.C. Law 4-34, §§ 29(c)(2), 30(b)(1), 28 DCR 3271.)

Section references. — This section is referred to in §§ 27-106, 27-107, 27-126, and 27-128.

Legislative history of Law 4-34. — See note to § 27-119.

Office of Director of Public Health abolished. — Section 1 of the Act of August 1, 1950, 64 Stat. 393, ch. 513, provided that the Health Officer of the District of Columbia would be known as the Director of Public Health. The Health Department of the District of Columbia, including the office of the head thereof, was

abolished and the functions thereof transferred to the Board of Commissioners of the District of Columbia by Reorganization Plan No. 5 of 1952. Reorganization Order No. 57 of the Board of Commissioners, dated June 30, 1953, and Reorganization Order No. 52, dated June 30, 1953, combined and redesignated Organization Order No. 141, dated February 11, 1964, established under the direction and control of a Commissioner, a Department of Public Health headed by a Director, for the purpose of planning, implementing, and directing public

health and hospital care programs, and for performing certain other allied medical and paramedical functions. The Anatomical Board was established under the direction and control of the Director of Public Health consisting of members as prescribed in the D.C. Code. The Order prior to redesignation abolished the previously existing Health Department, Gallinger Hospital, Glenn Dale Sanatorium, and the Anatomical Board and transferred their functions and positions to the new Department. The organization of the new Department was set out in the Order. The executive functions of the Board of Commissioners were transferred to the Commissioner of the District of Columbia by § 401 of Reorganization Plan No. 3 of 1967. Functions stated in Organization Order No. 141 were transferred to the Director of the Department of Human Resources by Commissioner's Order No. 69-96, dated March 7, 1969,

as amended by Commissioner's Order No. 70-83, dated March 6, 1970. The Department of Human Resources was replaced by Reorganization Plan No. 2 of 1979, dated February 21, 1980, which Plan established the Department of Human Services.

Undertaker may have license suspended or revoked for acts of unlicensed employee amounting to "culpable fault or omission" which resulted in removal of bodies from van by dogs and their exposure to public view in an alley. *Vann v. District of Columbia Bd. of Funeral Dirs. & Embalmers*, App. D.C., 480 A.2d 688 (1984).

Evidence in criminal prosecution. — This section does not preclude the admission into evidence in a murder prosecution of a section of the skull of the deceased. *Hart v. United States*, 130 F.2d 456 (D.C. Cir. 1942).

§ 27-121. Place of burial.

No person shall bury or cause to be buried within said District the body or part of the body of any deceased person, except in such grounds as were known and used as public or private burial grounds on January 1, 1902, or such as shall thereafter be designated by the Mayor of said District and authorized by him to be used as such. (Mar. 3, 1901, 31 Stat. 1297, ch. 854, § 678; 1973 Ed., § 27-121.)

Section references. — This section is referred to in §§ 27-106, 27-107, and 27-128.

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner.

The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

§ 27-122. Mode of burial.

No body shall be buried in said District in any vault unless the coffin be separately entombed in properly cemented stone or brick work, so as to render such vault airtight; such vault, after having been sealed, shall not be opened within 10 years; no body shall be temporarily deposited in any vault for a longer period than 1 month, unless such body is in an hermetically sealed metallic case, nor in any instance for a longer period than 1 year. (Mar. 3, 1901, 31 Stat. 1297, ch. 854, § 679; 1973 Ed., § 27-122.)

Section references. — This section is referred to in §§ 27-106, 27-107, and 27-128.

§ 27-123. Reopening graves; graves of pestilential disease victims.

No grave in said District shall be reopened, except for the purpose of disinterment, within 10 years after burial of a person above 12 years of age, or within 8 years after the burial of a child under 12 years of age, unless the grave has been, in the first instance, of sufficient depth to permit subsequent interments, in which case a layer of earth of not less than 1 foot thick shall be left undisturbed over the previously buried coffin, unless such coffin has been separately entombed in properly cemented stone or brick work; but if on reopening any grave the soil be found to be offensive, such soil shall not be disturbed. In no case shall a grave be opened in which has been buried the body of any person who has died of Asiatic cholera, yellow fever, typhus fever, smallpox (including varioloid), leprosy, the plague, tetanus, diphtheria, or scarlet fever; provided, that the Director of the Department of Human Services of the District of Columbia may, in his discretion, authorize the opening, under sanitary precautions, of any such grave, and the disinterment and reinterment in the same grave or other suitable burial ground, of the dead body of any person who has died of any of the contagious diseases enumerated above. (Mar. 3, 1901, 31 Stat. 1297, ch. 854, § 680; Jan. 20, 1936, 49 Stat. 1095, ch. 12; Aug. 1, 1950, 64 Stat. 393, ch. 513, § 1; 1973 Ed., § 27-123.)

Section references. — This section is referred to in §§ 27-106, 27-107, and 27-128.

Office of Director of Public Health abolished. — Section 1 of the Act of August 1, 1950, 64 Stat. 393, ch. 513, provided that the Health Officer of the District of Columbia would be known as the Director of Public Health. The Health Department of the District of Columbia, including the office of the head thereof, was abolished and the functions thereof transferred to the Board of Commissioners of the District of Columbia by Reorganization Plan No. 5 of 1952. Reorganization Order No. 57 of the Board of Commissioners, dated June 30, 1953, and Reorganization Order No. 52, dated June 30, 1953, combined and redesignated Organization Order No. 141, dated February 11, 1964, established under the direction and control of a Commissioner, a Department of Public Health headed by a Director, for the purpose of planning, implementing, and directing public health and hospital care programs, and for performing certain other allied medical and paramedical functions. The Anatomical Board

was established under the direction and control of the Director of Public Health consisting of members as prescribed in the D.C. Code. The Order prior to redesignation abolished the previously existing Health Department, Gallinger Hospital, Glenn Dale Sanatorium, and the Anatomical Board and transferred their functions and positions to the new Department. The organization of the new Department was set out in the Order. The executive functions of the Board of Commissioners were transferred to the Commissioner of the District of Columbia by § 401 of Reorganization Plan No. 3 of 1967. Functions stated in Organization Order No. 141 were transferred to the Director of the Department of Human Resources by Commissioner's Order No. 69-96, dated March 7, 1969, as amended by Commissioner's Order No. 70-83, dated March 6, 1970. The Department of Human Resources was replaced by Reorganization Plan No. 2 of 1979, dated February 21, 1980, which Plan established the Department of Human Services.

§ 27-124. Crematories; consent of property owners; permit.

No person shall, in the District of Columbia, build or maintain a crematory or other device for destroying human bodies, except within the limits of some duly-established cemetery in said District unless such person or persons has in writing the consent of the owners of more than one-half of the property within

a radius of 200 feet from the place where such crematory is to be erected and maintained and a permit from the Mayor of said District for the erection and maintenance of such crematory or other device; such permit to be for a term of years, not exceeding 5, to be specified therein; provided, that this section shall not apply to such crematories or other devices for destroying human bodies as may have been erected and were in operation on March 3, 1901. (Mar. 3, 1901, 31 Stat. 1298, ch. 854, § 682; 1973 Ed., § 27-124.)

Section references. — This section is referred to in §§ 27-106, 27-107, and 27-128.

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner.

The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

§ 27-125. Embalming; removal of tissue immediately after death.

It shall be unlawful for any person or persons to embalm, inject, or by any similar method preserve the dead body, or part of the dead body, of any human being in said District within 4 hours after death or before the issue of the death certificate; and in case the death is believed to be due to other than natural causes, or the cause thereof is unknown, such embalming, injecting, or preserving shall at no time be done unless such death certificate has been signed or approved by the Chief Medical Examiner. Notwithstanding the provisions of this section, whenever any person is pronounced dead by a physician duly licensed or duly registered under subchapter I of Chapter 13 of Title 2, tissue donated in accordance with the provisions of Chapter 15 or 16 of Title 2 may be removed by or under the supervision of a person licensed under the authority of § 2-1603 for preservation in a tissue bank operating pursuant to Chapter 16 of Title 2, or for use in accordance with the provisions of Chapter 15 of Title 2, without regard for any time limitation, or for any permit or certificate requirement, established by this section; provided, that with respect to a dead human body in the custody of the Chief Medical Examiner or under his jurisdiction, no tissue shall be removed therefrom for preservation except with the specific approval of the Chief Medical Examiner in each case. (Mar. 3, 1901, 31 Stat. 1298, ch. 854, § 683; Aug. 1, 1950, 64 Stat. 393, ch. 513, § 1; Sept. 10, 1962, 76 Stat. 537, Pub. L. 87-656, § 11; May 26, 1970, 84 Stat. 270, Pub. L. 91-268, § 9(e); July 29, 1970, 84 Stat. 578, Pub. L. 91-358, title I, § 160(a)(1); 1973 Ed., § 27-125; Oct. 8, 1981, D.C. Law 4-34, § 30(b)(2), 28 DCR 3271.)

Section references. — This section is referred to in §§ 2-1601, 2-1602, 2-1603, 2-1604, 2-1606, 2-1607, 27-106, 27-107, and 27-128.

Legislative history of Law 4-34. — See note to § 27-119.

Editor's notes. — Sections 2-1301 to 2-1343, which are part of subchapter I of Chapter 13 of Title 2, referred to in the second sentence, have been repealed. For related subjects, see Chapter 33 of Title 2, Health Occupations.

§ 27-126. Penalty.

Any person who shall violate or aid and abet in violating any of the provisions of § 27-120 shall, upon conviction thereof by competent judicial authority, be punished, for each offense, by a fine of not more than \$200, or by imprisonment for not more than 90 days, or both. (Mar. 3, 1901, 31 Stat. 1298, ch. 854, § 684; 1973 Ed., § 27-126; Oct. 8, 1981, D.C. Law 4-34, § 29(c)(3), 28 DCR 3271.)

Cross references. — As to penalties for unlawful trafficking in dead bodies and grave robbery, see §§ 2-1406 and 22-3103.

As to other penalty provisions, see § 2-1604.

Section references. — This section is referred to in §§ 27-106, 27-107, and 27-128.

Legislative history of Law 4-34. — See note to § 27-119.

§ 27-127. Prosecutions.

Prosecutions hereunder shall be in the Superior Court of the District of Columbia, in the name of said District; provided, that any person or persons so tried shall have the privilege, when demanded, of a trial by jury, as in other jury cases in said Superior Court of the District of Columbia. (Mar. 3, 1901, 31 Stat. 1298, ch. 854, § 685; Apr. 1, 1942, 56 Stat. 190, ch. 207, § 1; July 8, 1963, 77 Stat. 77, Pub. L. 88-60, § 1; July 29, 1970, 84 Stat. 570, Pub. L. 91-358, title I, § 155(a); 1973 Ed., § 27-127.)

Section references. — This section is referred to in §§ 27-106, 27-107, and 27-128.

§ 27-128. Court-ordered disinterment or disposal of ashes not affected.

Sections 27-101 to 27-114, 27-116 to 27-118, and 27-120 to 27-128 (except § 27-119) shall not be construed to:

(1) Interfere with or prevent the disinterment of any body in accordance with § 11-2311; or

(2) Interfere with the disposal of the ashes of bodies which have been cremated. (Mar. 3, 1901, 31 Stat. 1298, ch. 854, § 686; June 30, 1902, 32 Stat. 534, ch. 1329, § 686; June 25, 1936, 49 Stat. 1921, ch. 804; June 25, 1948, 62 Stat. 991, ch. 646, § 32(a), (b); May 24, 1949, 63 Stat. 107, ch. 139, § 127; July 29, 1970, 84 Stat. 578, Pub. L. 91-358, title I, § 160(a)(2); 1973 Ed., § 27-128; Oct. 8, 1981, D.C. Law 4-34, § 29(c)(4), 28 DCR 3271.)

Section references. — This section is referred to in §§ 27-106 and 27-107.

Legislative history of Law 4-34. — See note to § 27-119.

§ 27-129. Cremation required in certain cases.

Whenever the dead body of any person who has died from smallpox, Asiatic cholera, typhus fever, the plague, leprosy, glanders, scarlet fever, diphtheria, or epidemic cerebrospinal meningitis comes into the custody of any officer, employee, or agent of the District of Columbia to be disposed of at public expense, the said officer, employee, or agent shall cause said body to be incinerated. (Apr. 20, 1906, 34 Stat. 123, ch. 1641, § 1; 1973 Ed., § 27-129.)

Section references. — This section is referred to in § 27-131.

§ 27-130. Public crematory established.

The Mayor of the District of Columbia is authorized and directed to operate on reservation 13, commonly known as the Washington Asylum grounds, in the City of Washington, in said District, a crematorium of size sufficient for the incineration of all bodies that cannot, except at public expense, be disposed of within a reasonable time after death. The Council of the District of Columbia is hereby authorized to make, and the Mayor is hereby authorized to enforce, all rules necessary for the proper maintenance and operation of said crematorium. (Apr. 20, 1906, 34 Stat. 123, ch. 1641, § 2; Feb. 22, 1921, 41 Stat. 1144, ch. 70, § 7; June 28, 1944, 58 Stat. 533, ch. 300, § 18; Dec. 4, 1967, 81 Stat. 532, Pub. L. 90-173, § 1; 1973 Ed., § 27-130.)

Section references. — This section is referred to in §§ 3-214.4 and 27-131.

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 402(226) of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to the District of Columbia Council, subject to the right of the Commissioner as provided in § 406 of the Plan. The District of Columbia Self-Government and Gov-

ernmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

Washington Asylum consolidated. — The Washington Asylum, referred to in the first sentence of this section, was consolidated with the Jail by § 24-407, and is now known as the Washington Asylum and Jail.

§ 27-131. Act for promotion of anatomical science not affected by crematory law.

Nothing in §§ 27-129 to 27-131 shall be construed as repealing or in any way modifying any of the provisions of Chapter 14 of Title 2. (Apr. 20, 1906, 34 Stat. 124, ch. 1641, § 3; 1973 Ed., § 27-131.)



